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ABSTRACT

This report concerns the adequacy and availability of services to linguistic minorities provided by the judiciary in New Jersey. The findings were as follows: (1) court interpreters generally do not possess required skills, knowledge, and training; (2) forms and documents are not translated by professionals, are not equal in quality to their English counterparts, and are not equally accessible to all linguistic minorities; (3) court support services are not provided by bilingual and bilingual/multicultural personnel with essential skills, knowledge and training; (4) procedures for establishing qualifications and training for personnel in these fields is inadequate; (5) there are no comprehensive guidelines for establishing policy on the conduct of interpreted court proceedings, payment responsibilities, and administration of these services; (6) a statutory basis exists for providing interpreting services for the deaf and hearing impaired, but not for other linguistic minorities; and (7) court personnel, attorneys, and others involved with the linguistic minorities are often insensitive in their communications with these people. It is recommended that (1) the Supreme Court prescribe personnel qualifications and a State Board or Supreme Court Board be established to monitor the interpreters and translators; (2) training centers be designated to educate individuals pursuing these careers; (3) a comprehensive statutory basis be established for linguistic minorities, modeled on existing provisions for the deaf; (4) standards be established to govern all phases of interpreted court proceedings; (5) policies be formed to attract sufficient and adequate personnel; (6) translations be done by approved legal translators; (7) a board of appeals be established to deal with cases of unprofessional conduct; and (8) law schools and courts provide training in dealing with linguistic minorities. (CG)

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EQUAL ACCESS TO THE COURTS FOR LINGUISTIC MINORITIES

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FINAL REPORT
OF THE
NEW JERSEY SUPREME COURT TASK FORCE ON INTERPRETER AND TRANSLATION SERVICES

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SUPERIOR COURT OF NEW JERSEY

HERBERT S. ALTERMAN
JUDGE

COURTHOUSE
PATERSON, NEW JERSEY 07505

TO: THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF
THE SUPREME COURT

I am pleased to submit the report of the Task Force on Interpreter and Translation Services. The Task Force was charged with the responsibilities of identifying and documenting the manner in which linguistic barriers inhibit equal access to our courts, evaluating current practices, and recommending policies and strategies to insure equal access to linguistic minorities.

The Task Force embarked upon an extensive research program. We collected all relevant reports, learned papers, case law and statutes in each state and federal system. We also conducted an extensive program of surveys, interviews and field visits throughout New Jersey. The information thus compiled forms a proposed Judicial Administrative Code section governing the qualifications and conduct of translaters and interpreters in court and court-related proceedings.

Until now, no jurisdiction has gathered this massive amount of information and reduced it to a comprehensive policy statement. Inquiries already received by the Administrative Office of the Courts from other jurisdictions suggest that these recommendations may well form the basis for similar endeavors throughout the country.

The members of the Task Force appreciate the opportunity to have participated in this significant effort. We also wish to recognize the diligence and unflagging dedication of Mr. Robert Joe Lee and the valuable assistance of Ms. Edilfa Perez, who were assigned by the Administrative Office of the Courts to assist the committee.

Respectfully submitted,

HERBERT S. ALTERMAN, J.S.C.
CHAIRMAN

MEMBERS OF THE TASK FORCE

Hon. Herbert S. Alterman, J.S.C., Passaic County, Chairman; sixteen years in private practice, has sat in Municipal, District, Juvenile and Domestic Relations Courts, as well as in civil and criminal matters in Superior Court.

Felipe Chavana, Esq., Staff Attorney with Legal Services in New Brunswick.

Hon. John J. Dios, J.S.C., Essex County Superior Court Judge, formerly a Newark Municipal Court judge and Essex County District Court judge, has sat on criminal matters in Superior Court and is the state's only Superior Court judge of Hispanic descent.

Zulima V. Fereaud Farber, Esq., an attorney in private practice with Lowenstein, Sandler, et al in Essex County, formerly Assistant Prosecutor in Bergen County and Assistant Counsel to Governor Brendan T. Byrne.

Marilyn R. Frankenthaler, Ph.D., Esq., then Associate Professor of Spanish and Coordinator for Paralegal Studies, since promoted to Professor and Director of the Center for Legal Studies at Montclair State College; author of numerous articles and books on interpreting and translating in the legal context, as well as Spanish literature.

R. Grace Jung, Court Administrator of the Vineland Municipal Court during most of the Task Force's life, presently Court Administrator of the Gloucester Township Municipal Court.

Frank W. Kirkleski, Jr., Trial Court Administrator (presently of Ocean Vicinage, formerly Ocean-Burlington Vicinage), formerly a Probation Officer.

Hon. Steven Z. Kleiner, J.S.C., Cumberland County, who has presided in each type of court except Tax Court and has served four Municipal Courts; expert in juvenile and family matters.

Rosa Olivera, Hudson County Probation Officer at the time of her appointment in July, 1983, as well as Federally certified court interpreter, since employed as an official interpreter and promoted to Supervisor of Interpreters in the U.S. District Court, Eastern District of New York; formerly an official interpreter in the Hudson County Courts.

Catherine W. Pruden, of Lawrenceville, a professional interpreter and teacher at the Katzenback School for the deaf; the only New Jersey interpreter for the deaf with both the Comprehensive Skills Certificate and the Legal Skills Certificate administered by the National Registry of Interpreters for the Deaf.

Virginia Redick, Official Interpreter in the New York (Brooklyn) Supreme Court, certified court interpreter by four states and certified translator by the American Translators Association; resigned in June, 1983.

Ariel Antonio Rodríguez, Esq., Union City attorney in private practice, formerly an Assistant Prosecutor in Hudson County.

Ivelisse Torres-Maybrook, Esq., Assistant Attorney in the Office of the Public Defender, in Camden County at the outset of the Task Force, since reassigned to Union County; formerly with the Puerto Rican Legal Committee in Newark.

Sandra Valdés, Court Liaison Officer in the Passaic County Pretrial Intervention Program, formerly a Passaic County Probation Officer--Bilingual.

EXECUTIVE SUMMARY

Chief Justice Robert N. Wilentz appointed the Supreme Court Task Force on Interpreter and Translation Services in the Spring of 1982 and charged it to review the availability and adequacy of services delivered to linguistic minorities by the Judiciary. He specifically requested that the Task Force recommend policies and programs which would better ensure equal and adequate access to the courts and court services for linguistic minorities.

In New Jersey, individual judges, court administrators, interpreters and other judicial personnel have taken some enlightened actions over the years to improve accessibility of the courts for linguistic minorities. However, developments in the last decade point out the need for a cohesive, statewide approach for providing adequate interpreting, translating, bilingual and bilingual/multicultural services. Those developments include the Federal Bilingual Court Interpreters Act of 1978, the burgeoning of related case law, the emergence of the academic fields of court intepreting, legal translating, and intercultural communication, and the ongoing arrival of thousands of non-English-speaking persons.

The Task Force has identified the following guiding principle which is critical for ensuring equal access to justice for linguistic minorities:

> The courts should be equally accessible to all persons regardless of the degree of their ability to communicate effectively in English.

This principle guided the Task Force in selecting significant areas for study and documentation.

The core problem identified in the findings of the Task Force is that language services are not being provided at a level of competence which makes the courts equally accessible to all persons regardless of their ability to communicate effectively in English. The following findings summarize the current state of court interpreting, legal translating, bilingual and bilingual/multicultural delivery of court support services in New Jersey and provide a foundation for a comprehensive approach for judicial action:

> Finding #1: Persons providing court interpreting services generally do not possess requisite skills, knowledge and training.
>
> Finding #2: Procedural forms and documents used by the courts are not generally translated by professionals with specialized skills, knowledge and training, they are not always printed at levels of quality equal to that of the respective English versions, and they are not accessible equally to all linguistic minoritites.
>
> Finding #3: An appropriate level of court support services of the judicial system is not generally provided by bilingual and bilingual/multicultural personnel with essential skills, knowledge and training.
>
> Finding #4: Existing procedures for establishing qualifications are inadequate for court interpreters in the foreign languages, adequate for court interpeters for the deaf and hearing impaired and for bilingual court support personnel in public contact positions, and procedures do not exist for establishing qualifications of legal translators and bilingual/multicultural court support personnel. Court interpreters and legal translators have had inadequate opportunity to develop their professional skills through training and education and are not guided by any binding canons of ethics.
>
> Finding #5: There are no comprehensive guidelines which establish policy on the conduct of interpreted court proceedings, determine responsibilities for paying related costs, or provide for the effective administration of court interpreting, legal translating, bilingual and bilingual/multicultural services.
>
> Finding #6: A statutory basis for providing adequate court interpreting services exists for the deaf and hearing impaired but not for other linguistic minorities.

> Finding #7: It is frequently perceived that some court personnel, attorneys and other persons engaged in delivering judicial or legal services to linguistic minorities are not sufficiently sensitive to the importance and complexities of communicating with and delivering effective services to persons of diverse linguistic and cultural backgrounds.

Based upon its findings, the Task Force submits fifteen recommendations. While they are directed to the Judiciary, it is clear that a comprehensive program of change is needed that will involve the Executive and Legislative Branches as well. Recommendations #1 through #6, which flow from Findings #1 through #4, are designed to facilitate equal access to justice for linguistic minorities through the establishment of appropriate standards, qualifications, training, educational opportunities, and canons of ethics for persons who serve as court interpreters, legal translators, bilingual or bilingual/multicultural court support personnel.

> Recommendation #1: The Supreme Court should prescribe the qualifications of persons who interpret or translate in or for the courts.
>
> Recommendation #2: The Supreme Court should recommend that the Legislature establish a State Board of Court Interpreting and Legal Translating analogous to the State Board of Shorthand Reporters. If such a Board is not recommended or is not established by the Legislature, the Supreme Court should establish an equivalent board.
>
> Recommendation #3: The Supreme Court should prescribe the qualifications of appropriate bilingual and bilingual/multicultural court support personnel and should adopt policies to ensure that services delivered by court support personnel to linguistic and cultural minorities are linguistically and culturally appropriate.
>
> Recommendation #4: The Chief Justice should recommend that the Chancellor of the Department of Higher Education designate several public institutions of higher education as centers for (1) training court interpreters and legal translators, (2) equipping persons studying in fields leading to employment in the support services internal or external to the Judiciary with cultural fluency and optional, ancillary interpreting and translating skills, and (3) developing the requisite skills of court personnel who are presently employed.

Recommendation #5: The Supreme Court should recognize the need for ongoing training and provide for the continuing professional education of current and future personnel who provide court interpreting, legal translating, bilingual and bilingual/multicultural court support services.

Recommendation #6: The Supreme Court should adopt canons of ethics binding upon all persons who interpret or translate in or for the courts.

Recommendations #7 through #12, which are based on Findings #5 and #6, are designed to facilitate equal access to justice for linguistic minorities through the establishment of an adequate statutory basis, an effective administrative structure, and comprehensive policy governing costs and fees for the provision of court interpreting, legal translating, bilingual and bilingual/multicultural court support services.

Recommendation #7: The Supreme Court should recommend that the Legislature establish a comprehensive statutory basis providing adequate court interpretation and legal translation services for all linguistic minorities, modeled upon existing statutory provisions for the deaf and hearing impaired.

Recommendation #8: The Supreme Court should adopt uniform standards to govern all phases of all interpreted court proceedings and determine responsibilities for paying the related costs.

Recommendation #9: The Supreme Court should assure effective organization and efficient administration of court interpreting, legal translating, bilingual and bilingual/multicultural court support services at the state and local levels.

Recommendation #10: The Supreme Court should adopt policies which will attract, employ and retain sufficient numbers of qualified court interpreters, legal translators, bilingual and bilingual/multicultural court support personnel.

Recommendation #11: The Supreme Court should adopt a policy that requires all judicial forms and documents used by persons involved in court proceedings to be drafted in easily translatable English and to be translated into such additional languages as the Administrative Director of the Courts approves, all such translations to be made by approved legal translators, and all such translations to be printed at levels of quality equal to that of the corresponding English versions.

Recommendation #12: The Supreme Court should adopt a program of informing linguistic minorities about the Judiciary and its services and should establish a procedure to enable linguistic minorities to bring allegations of unprofessional performance or unequal access to the legal system and to seek resolution thereof.

Recommendations #13 through #15, which are rooted in Finding #7, are designed to facilitate equal access to justice for linguistic minorities by improving the sensitivity of court personnel, attorneys and others engaged in delivering legal services to persons of diverse linguistic and cultural backgrounds.

Recommendation #13: The Supreme Court should adopt policies and programs to orient and sensitize all court personnel who deliver services to linguistic minorities with regard to the importance and complexities of communicating with persons of diverse lingustic and cultural backgrounds. This orientation should include instruction regarding techniques of working with a court interpreter.

Recommendation #14: The Chief Justice should recommend that the state's law schools and other institutions for educating the bar offer instruction to attorneys and other legal personnel on how best to provide effective services which are sensitive to the diverse backgrounds of linguistic and cultural minorities, as well as how to work with a court interpreter.

Recommendation #15: In the light of the findings and recommendations of this Task Force, the Chief Justice should recommend that the offices of the Attorney General (County Prosecutors), Public Advocate, and Legal Services evaluate the accessibility of their services to linguistic and cultural minorities.

The Task Force has prepared strategies for implementing these recommendations (see Chapter 6), fully recognizing the need for in-depth analysis of the cost and feasibility of the proposed administrative structure as well as the need for additional resources and cooperation from other branches of government. In addition, the Administrative Office of the Courts should review these recommendations and propose strategies of implementation and prepare a comprehensive action plan including short- and long-range goals.

ACKNOWLEDGEMENTS

A project of this magnitude creates many debts. On the one hand it is risky to name anyone since so many persons who helped in so many ways will go unnamed. Even so, a few persons contributed so much that it would be even more unfair not to name them.

Four persons provided invaluable professional assistance as consultants: Ken Gallagher, Ph.D. candidate at the Graduate School of Criminal Justice, Rutgers/Newark; Sara Garcia-Rangel, Official Interpreter, United States District Court, Southern District of New York; Nancy Lopez-Balboa, Instructor of Spanish and Supervising Professor in the Hispanic Community Program Internship in Law, Montclair State College, author of PRACTICAL SPANISH FOR LAWYERS AND LEGAL PERSONNEL and Instructor of a course based upon these materials at the New Jersey Institute for Continuing Legal Education, who was also a member of the committee that edited the Final Report; and Rosa Olivera, then a Probation Officer in the Hudson County Probation Department, since appointed Official Interpreter and subsequently promoted to Supervisor of Interpreters, United States District Court, Eastern District of New York.

Several experts in the fields of interpreting, delivery of psychological services to hearing impaired clients and drafting documents in plain English evaluated drafts of some of the background reports and provided many helpful suggestions, among them: Dr. Margareta Bowen, Division Head, Division of Interpretation and Translation, School of Languages and Linguistics, Georgetown University; Drs. Veda Charrow and Janice C. Redish, Document Design Center; Dr. Alicia Betsy Edwards, Visiting Lecturer in Translation and Interpretation,

Department of Spanish and Portugese, University of California; David Fellmeth, President of the Court Interpreters and Translators Association, Inc.; Jonathan Gell in the Office of New Jersey Heritage, Department of Evironmental Protection; Jon Leeth, Chief of the Office of Court Reporting and Interpreting Services, Administrative Office of the United States Courts; and Dr. McCay Vernon, Professor of Psychology at Western Maryland College.

Many others have generously given special encouragement, counsel and wisdom throughout the work of the Task Force. They include Roberto Alcazar, Esq., Deputy Attorney General, Department of Law and Public Safety; Efrain Blasini, Department of Civil Service; Ramon L. Bonachea, Dean, Bilingual Education, Hudson County Community College; Dennis Cokely, President, National Registry of Interpreters for the Deaf; Dr. Andrew Conrad, linguist and writing consultant; Richard Herring, Director, and Susan Galasso, Coordinator of Interpreter Referral Services, Division of the Deaf, Department of Labor and Industry; Dena Kohn, Chief Interpreter, United States District Court, Southern District of New York (Manhattan); Jose Antonio LaBoy, Esq., of Adamo & Pagliughi, Vineland; Elby Pagano, Chief Interpreter, Connecticut Judicial Department; Lucy Rodriguez, Senior Court Interpreter, Passaic County Courthouse, Paterson.

The staff to the Task Force enjoyed the assistance of two sets of persons who supplemented existing staff resources. First, three energetic student interns, Robert W. Sharman, James F. Sylvester and Samuel Watkins, worked diligently, processing many questionnaires, ferreting out information for and drafting substantial portions of several background reports. Second, Michael

H. Epstein, a Research Associate at the Administrative Office of the Courts, helped write two background reports and supervised Nancy Comfort and Carolyn R. Ferone as they worked diligently and patiently putting the Final Report on a new word processing system which they learned during the project.

Loretta Bellmont of the Statistical Services Section at the Administrative Office of the Courts, provided access to the Educational Computer Network whenever we needed it, often going out of her way to help without any advance warning.

Finally, much of the extensive bibliographic work required by the Task Force was made possible by two tremendous resource people at the New Jersey State Library, Robert Fortenbaugh and Becky Preece-Canfield.

CHAPTER ONE

BACKGROUND TO THE TASK FORCE

Linguistic Diversity in New Jersey

Linguistic diversity is an indisputable feature of New Jersey's history and contemporary life. For example, each census since 1900 has reported that English has not been the mother tongue for between 10% (1960) and 43% (1920) of the state's population.[1] The 1980 census estimated that at least 15.9% of persons five years old and older speak a language other than English at home and at least 3.1% of the state's residents speak English not well or not at all.[2] When these figures are revised to include estimates of (1) illegal aliens not counted by the census, (2) immigrants since 1980 and (3) deaf persons, at least 18% (and maybe as much as 20%) of the state's inhabitants speak a language other than English at home.[3]

---

[1] The Task Force extensively reviewed the history and current status of linguistic minorities in New Jersey. The findings are reported in Background Report #14: DEMOGRAPHIC OVERVIEW OF PERSONS RESIDING IN NEW JERSEY WHO MAY REQUIRE BILINGUAL COURT SERVICES and the data cited here are found on page 4 of that report. The system of citing this and the other background reports will be as follows: 14 B.R. 4 (May 1984) refers to background report #14, page 4 and indicates further that this particular background report was completed in May, 1984. See page 18 for a complete list of all 23 background reports.

[2] Bureau of the Census, U.S. Dep't of Commerce, 1980 CENSUS OF POPULATION 15, 724-725 (Vol. 1, Characteristics of the Population; Ch. C, General Social and Economic Charcteristics; Pt. 32, New Jersey; PC80-1-C32; Jul. 1983). Data released by the Bureau of the Census since 14 B.R. was completed and which supersede census sources used to write 14 B.R. are cited separately. Census data reported in 14 B.R. which have not been superseded are cited to 14 B.R.

[3] 14 B.R. 18-19 (May 1984).

The presence of linguistic minorities[4] in the state varies considerably among the counties. Some counties have large populations of persons who speak languages other than English while negligible populations of such persons are found in others. For example, over one hundred thousand persons per county are estimated by the census to speak a language other than English at home in Bergen, Essex, Hudson and Passaic Counties while there are less than five thousand such persons per county in the counties of Cape May and Salem. See Table One for the statistics for all twenty-one counties.

A similar variation prevails among the state's municipalities. Less than 10% of the population of most (55%) of the towns, townships and places with a population of 2,500 or more speaks a language other than English at home. However, 10-19% of the population of 35% of the municipalities, 20-29% of the population of 6% of the municipalities and 30% or more of the population of 4% of the municipalities speak a language other than English at home. Over half of the population of five municipalities speak a language other than English at home: Union City (72.1%), West New York (71.2%), Hoboken (56.2%), Perth Amboy (52.4%) and Passaic (50.5%).[5]

Not only are there many persons who speak languages other than English, there are many different languages spoken in New Jersey. The 1980 census found

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[4] The phrase "linguistic minorities" is used to refer to all persons who are deaf or hearing impaired and/or whose mother tongue is not English. For the purposes of this report, this phrase includes all persons counted by the census as persons who speak a language other than English at home plus all deaf or hearing impaired persons who were not counted as a non-English-speaking group.

[5] Bureau of the Census, supra n. 2, at 15-23. The total number of municipalities against which these percentages were computed is 526.

TABLE ONE

LANGUAGE SPOKEN AT HOME AND ABILITY TO SPEAK ENGLISH FOR PERSONS 5 YEARS OLD OR OLDER BY COUNTY

County	# of Persons 5 Years Old or Older	Persons Who Speak a Language Other than English at Home		Persons Who Speak a Language Other than English at Home Not Well or Not at All	
		#	%	#	%
Atlantic	182,535	17,694	9.7	2,626	1.4
Bergen	803,413	135,280	16.8	18,685	2.3
Burlington	337,807	25,788	7.6	2,700	.8
Camden	437,619	42,775	9.8	6,494	1.5
Cape May	77,531	4,197	5.4	393	.5
Cumberland	123,332	18,347	14.9	3,556	2.9
Essex	794,088	157,569	19.8	38,840	4.9
Gloucester	184,732	9,137	4.9	930	.5
Hudson	519,973	202,404	38.9	57,396	11.0
Hunterdon	81,881	5,277	6.4	442	.5
Mercer	289,610	36,811	12.7	4,675	1.6
Middlesex	561,283	89,563	16.0	14,036	2.5
Monmouth	471,850	39,476	8.4	4,413	.9
Morris	383,605	38,624	10.1	4,687	1.2
Ocean	322,819	31,355	9.7	3,081	1.0
Passaic	417,488	109,311	26.2	27,252	6.5
Salem	60,064	2,725	4.5	333	.6
Somerset	192,068	21,886	11.4	2,319	1.2
Sussex	106,615	6,856	6.4	448	.4
Union	476,253	95,601	20.1	20,215	4.2
Warren	78,788	5,496	7.0	472	.6
TOTAL	6,903,354	1,096,172	15.9	213,993	3.1

Source: Supra n. 2, at 724-725.

that twenty-one languages other than English are spoken by 5,000 or more persons. The languages spoken by the largest numbers of persons are Spanish (431,288), Italian (195,508), Polish (78,306), German (72,941) and Portuguese (38,248).[6] In addition, the Division of the Deaf estimates that there are approximately 50,000 deaf persons in the state, most of whom communicate primarily in American Sign Language.[7]

There are many expressions of linguistic diversity in the state. For example, eighteen New Jersey radio stations broadcast programs in eleven languages, television programs are available in six languages from New Jersey television stations, one daily newspaper is printed in Italian while one or more non-daily newspapers are printed in German, Italian, Portuguese and/or Spanish. During the 1983-1984 school year, bilingual education classes were offered in English and eleven other languages.[8]

Language Policy in New Jersey

The presence of such linguistic diversity presents several policy issues to public services.[9] At the broadest level, for example, should language policy encourage linguistic diversity or should it encourage an American English standard?[10] More concretely, what moral, legal and administrative obligations do public agencies that deliver health, social, educational, judicial, legal, transportation and other public services have to ensure effective and efficient delivery of services to linguistic minorities?[11] Assuming there are such obligations, how are they best met?[12]

---

[6] 14 B.R. 27 (May 1984).

[7] Id. at 16. See Table 11 at 28 of 14 B.R. for a breakdown of the languages spoken on a county-by-county basis.

[8] 14 B.R. 20-22 (May 1984).

[9] Some helpful resources on language policy in the United States include N.F. Conklin and M.A. Lourie, A HOST OF TONGUES: LANGUAGE COMMUNITIES IN THE UNITED STATES (1983); LANGUAGE IN THE USA (C.A. Ferguson and S.B. Heath eds. 1981); LANGUAGE AND PUBLIC LIFE (Georgetown University Round Table on Languages and Linguistics, J.E. Alatis and G.R. Tucker eds. 1979); and A.H. Leibowitz, FEDERAL RECOGNITION OF THE RIGHTS OF MINORITY

LANGUAGE GROUPS (1982). See also LANGUAGE PLANNING NEWSLETTER, a quarterly periodical which monitors the field of language planning.

10 Consider, for example, the 1984 controversy surrounding a proposal by Commissioner Saul Cooperman of the Department of Education to require passage of an examination of English language proficiency before graduating from high school. R.J. Braun, "Education Chief Moves to Make English Fluency a Requirement," Newark STAR-LEDGER, Dec. 8, 1983, at 16; J.A. Slobodzian, "The Lines Remain Sharply Drawn on N.J.'s New English-fluency Test," Philadelphia INQUIRER, Mar. 11, 1984, at 3-G. In addition, note that former Senator S.I. Hayakawa of California and Senator W.D. Huddleston of Kentucky are leading a movement seeking a constitutional amendment to make English the official language of the United States. 127 Cong. Rec. S3998 (daily ed. Apr. 27, 1981); 129 Cong. Rec. S12640 (daily ed. Sept. 21, 1983).

11 The New Jersey Supreme Court has held, for example, that while bilingual notices are not constitutionally required, "It is doubtless true, especially in areas where there is a high density of non-English speaking population, that administrative and humanitarian considerations would warrant the use of bilingual documents." Alfonso v. Board of Review, 89 N.J. 41,46 (1982).

12 For example, should employees in public agencies be required to speak English only while on the job (except when another language must be spoken in order to deliver a service), or should they be permitted to speak their native tongue in private conversations? Note the controversy that erupted in the summer of 1983 when the mayor of Elizabeth issued an English-only policy for city employees in June. L. Peterson, "Elizabeth Mayor Asked to Rework Language Edict," Newark STAR-LEDGER Aug. 31, 1983, at 31. Should bilingual or multilingual street signs be erected in certain municipalities? Note the West New York attempt to erect Spanish-English street signs which was met with "furious complaints in at least three languages." A.K. Lenehan, "How Far Bilingualism?," Newark STAR-LEDGER, Sept. 11, 1983, at 1.

The Legislature has answered some of these questions on an ad hoc basis but the State has no comprehensive language policy. The English language enjoys a position of preeminence. For example, English must be used in certain official or legal circumstances[13] and, from 1794 to 1951, English was the official language of the state's courts.[14] However, it is neither constitutionally nor legislatively the official language of the State.

The Legislature has become increasingly cognizant of the demands placed on public services by the multilingual composition of the state's people and has taken several steps to enhance their access to public services. Perhaps the most significant action in this respect made German a quasi-official language in New Jersey during most of the second half of the Nineteenth Century. During that time most gubernatorial inaugural speeches were published in German as were public laws, all at the expense of the State. German newspapers were designated as official newspapers for the publication of legal notices and numerous annual reports of several State agencies were published in official German language editions.[15] One law from this period is still on the books, namely N.J.S.A. 2A:61-2, which since 1875[16] has provided that notices of the sale by a public official of certain real estate may be published in a newspaper printed in a foreign language. In addition, the Legislature has authorized the appointment of court interpreters in a number of languages since 1889[17] and, since the early 1970's, has passed eight acts which protect certain rights of or make certain public services more accessible to the state's linguistic minorities. These acts have provided for, among other things, translation of a variety of official forms and declarations of rights,[18] bilingual education,[19] interpreters in a variety of contexts,[20] translations of right-to-know documents in the workplace,[21] and an employee education and training program in Spanish.[22]

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[13] For example, N.J.S.A. 52:36-4 provides, "No laws or public documents shall be printed, published or advertised by the authority or at the cost of the state, except in the English language." This law has been on the books since L. 1895, c. 414, §1. Further, only newspapers published in the English language may be used as legal newspapers for the publication of official advertisements (N.J.S.A. 35:1-2, on the books since L. 1884, c. 145, §1) and official state publications are to be published in newspapers which are "entirely printed in the English language" (N.J.S.A. 35:1-2.1, a statute which has been viable since L. 1938, c. 328, §1).

[14] §17 of An Act Respecting Amendments and Jeofails, Passed the 21st of Nov., 1794. Paterson's Laws of New Jersey, 1800, p. 129. Repealed by L. 1951, 1st Sp. Sess., ch. 344. N.J.S.A. 2A, Bk. 1, at 1,21.

[15] See 1 B.R. 8-13 (Jul. 1982) for complete documentation of the extent to which German was a quasi-official language. Note further that Dutch

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[16] L. 1875, c. 102, as amended by the Revision of 1877, p. 1049, §27.

[17] See 4 B.R. 2-16 for an historical review of the Legislature's acts providing for court interpreters.

[18] Voter registration forms, L. 1974, c. 30, §16 (N.J.S.A. 19:31-64c); samples of general election ballots, L. 1974, c. 30, §2; (N.J.S.A. 19:14-21); and primary sample election ballots, L. 1974, c. 51, §1 (N.J.S.A. 19:23-22.4).

Many other forms have been translated by State agencies to assist Spanish-speaking residents. Approximately fifty of the forms for which Spanish translations have been prepared are listed in Alfonso, supra n. 11, at 53 n.7 (1982).

Statements of rights to be translated include terms and conditions of employment for seasonal farm workers, L. 1975, c. 49, §4 (N.J.S.A. 34:8A-10d); rights of victims of domestic violence, Prevention of Domestic Violence Act, L. 1981, c. 426, §7 (N.J.S.A. 2C:25-7); rules and regulations of state correctional institutions, L. 1975, c. 95, §2 (N.J.S.A. 30:4-8.5).

In addition, the New Jersey Administrative Code provides that several types of information communicated to parents of educationally handicaped pupils shall be written "in the native language of the home unless this requirement would place an unreasonable burden upon the local school district." N.J.A.C. 6:28-1.5(c)2. See also N.J.A.C. 6:28-1.7(e)4 and 6:28-1.7(t).

The actions of the Legislature suggest three basic approaches to protecting the rights of and making services accessible to linguistic minorities. The first approach is to provide an *interpreter*, a person who can help bridge the obvious communication barrier that occurs when a linguistic minority client[23] who speaks little or no English seeks a particular service. Secondly, many positions in public service agencies are reserved for bilingual persons. The assumption here is that a bilingual employee will be able to perform his or her duties in English or the second language, depending upon the needs of the individual client to whom the services are being delivered. The third approach provides bilingual documents and forms. This seeks to enable linguistic minorities to comprehend materials that seek to disseminate information, process cases or ensure comprehension of rights or obligations. Such documents must be prepared by translators.

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[19] Bilingual Education Act, *L*. 1975, *c*. 197 (*N.J.S.A*. 18A:35-15 *et seq*.).

[20] For seasonal farm workers and coordinated by Bureau of Migrant Labor in the Department of Labor and Industry, *L.* 1971, *c.* 194, §2 (*N.J.S.A*. 34:9A-7.2); for any deaf or hearing impaired person appearing before an official or legal proceeding, *L.* 1983, *c.* 564 (*N.J.S.A*. 34:1-69.7 *et seq*.). A bill has been introduced which would enable deaf persons to serve as jurors with the assistance of an interpreter provided by the Judiciary (Assembly No. 1636).

In addition, the New Jersey Administrative Code provides that *parolees* have the right to be aided by an interpreter at parole hearings (*N.J.A.C.* 10A:71-3.13[e] and 10A:71-7.14[c]1), that district school boards shall arrange "for a qualified interpreter to assist parents who are deaf or whose native language is other than English" at conferences where individualized education programs of *special education pupils* are developed or reviewed (*N.J.A.C*. 6:28-1.7[s]), that interpreters are permitted at a party's expense "when needed to present evidence" at *any contested case in the Executive Branch* of the State Government and that such interpreters shall be taken from an official registry of interpreters" or the judge shall "otherwise be assured that the proposed interpreter can adequately aid and enable the witness in conveying information to the court" (*N.J.A.C*. 1:1-3.10), and that *county welfare boards* shall arrange for an interpreter to assist a non-English speaking client during hearings (*N.J.A.C*. 10: 81-6.14).

[21] Worker and Community Right to Know Act, *L.* 1983, *c.* 315, §§4,5,11,12 (*N.J.S.A*. 34:5A-4c,5,11a,11b,12).

[22] *Id*. at §11 (*N.J.S.A*. 34:5A-11a).

Conclusions

Linguistic minorities form a significant proportion of the population of New Jersey, although they reside in greater numbers in some counties and municipalities than others. Like others, they seek services from public agencies. The appearance of the language barrier which often emerges when linguistic minorities seek such services raises policy questions which the Legislature has addressed on an ad hoc basis but with increasing sensitivity. Legislative actions have sought to protect the rights and enhance the access of linguistic minorities to public services by overcoming the linguistic barrier. In order to accomplish these aims the Legislature and some state agencies at times have authorized the use of interpreters, translators, and bilingual personnel. They have also required the preparation of bilingual versions of certain forms and documents in certain circumstances.

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[23] Unfortunately there is no single word that satisfactorily refers to all persons who are "served" by the Judiciary. Some of the common words such as "defendant," "witness," and "party" are too narrow as they exclude entire classes of persons (e.g., probationers). Since the word "client" is a commonly used term that refers to persons who receive services and absent the availability of a completely satisfactory generic term, this report will use the word "client" to include any principal party in interest (i.e., a complainant, defendant, witness, and parent/guardian of a juvenile) and any person who is under some form of court control or supervision (e.g., probationer, P.T.I. enrolee, person placed on supervisory treatment).

CHAPTER TWO

ORIGINS AND WORK OF THE TASK FORCE

Linguistic Minorities and the Judiciary

Linguistic minorities seek services from all public institutions and the Judiciary is certainly not exempt. The presence of linguistic minorities in the courts is substantial. In the average month, an estimated minimum of 7,300 proceedings (which account for 7.9% of all proceedings) involve a foreign language interpreter and another 34 proceedings require an interpreter for the deaf.[1] Almost nine in ten of the state's judges (88%) have presided over one or more interpreted proceedings.

The volume of interpreted proceedings varies considerably in terms of county, type of court and municipality. All courts in Hudson County, for example, see a minimum estimated average of 2,271 interpreted proceedings per month, accounting for almost one-third (31%) of all of the state's interpreted proceedings. Meanwhile Cape May, Hunterdon, Sussex and Warren Counties see fewer than ten cases each that require an interpreter in the average month. With respect to variation according to types of court, the Municipal Courts account for over two-thirds (68%; 4,992) of all interpreted proceedings while ten or fewer interpreted proceedings are seen statewide in the average month in the Probate, General Equity and Tax Courts. Sixteen judges (representing seven different counties), nine of which are Municipal Court judges, reported that

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[1] These data are based on estimates supplied by 80% of the judges. The actual numbers could go as high as 8,000 interpreted proceedings in the foreign languages and 40 interpreted proceedings involving a deaf client. 9 B.R. 8-9 (Dec. 1983).

30% or more of all of their proceedings require the assistance of a court interpreter.[1]

Not only do linguistic minorities appear in the courts in large numbers, they present a tremendous diversity of languages. Thirty-three different languages have been identified as having appeared before the state's judges, the most common being (in descending order), Spanish, Italian, American Sign Language, Polish, Greek, Portuguese and Russian. This diversity also varies significantly among the counties, the three most diverse being Middlesex, Essex and Passaic and the least diverse being Sussex, Warren and Cape May.[2] For example, during 1984, the Criminal Division of the Superior Court in Passaic County, which has three full-time court interpreters (Spanish-English) on its staff, required the assistance of court interpreters in the following additional languages: American Sign Language (9),[3] Arabic (2), French (1), Polish (12), Serbo-Croatian (3), Tibetan (1), and Turkish (4).

Creation of the Task Force

The presence of such large numbers of lingustic minorities representing such linguistic diversity has been a subject of concern for several Chief

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[1] See id. at 6-14 (Dec. 1983) for a review of the volume of interpreted proceedings in the state, 14-25 and 116-120 for more details about the volume and diversity of languages appearing in the courts, and 121-123 for a description of linguistic diversity among the state's judges.

[2] See 14 B.R. 23-30 (May 1984) for details about the diversity of languages spoken in New Jersey. See 9 B.R. 14-25,116-120 (Dec. 1983) for more details about the volume and diversity of languages appearing in the courts, and 121-123 for a description of linguistic diversity among the state's judges.

[3] The numbers in parenthesis represent the total number of cases for which an interpreter in the language was required during the year.

Justices of the Supreme Court of New Jersey. Related administrative issues have also been raised at some of the regularly scheduled meetings of the Chief Justice with the Assignment Judges. Persons who have experienced or witnessed the difficulties encountered by linguistic minorities have called for improvements in the delivery of court interpreting, legal translating and bilingual court support services.[4] On May 19, 1982, Chief Justice Robert N. Wilentz created a task force to develop a comprehensive plan for ensuring equal access to the courts for linguistic minorities.

Mandate of the Task Force

The Chief Justice asked the Task Force to accomplish the following four goals:

1. To identify all areas within the Judiciary where equal access to our courts may not be fully available due to linguistic barriers;
2. To document the nature and extent of the linguistic barriers presently existing and to evaluate current policies and practices regarding interpreters and translation services;
3. To recommend policies and ongoing programs to ensure equal and adequate access to linguistic minorities, including the physically handicapped; and
4. To submit strategies for implementing these policies and programs.

Members of the Task Force

Considerable energy went into seeking and selecting the most knowledgeable and representative persons to serve on the Task Force. After a thorough review of qualifications, geographical location, organizational affiliation, relevant experience, knowledge and professional concern, three Superior Court judges, an Assistant Attorney in the Office of the Public Defender, two former Assistant Prosecutors, two professional interpreters, a staff attorney with Legal Services, a Superior Court administrator, a Municipal Court administrator, a court liaison officer, and an academician with expertise in court interpreting, legal translation and cross-cultural communication were selected and appointed.[5]

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[4] "Court support services" is used to refer to all services delivered by employees of the Judiciary except judges. For example, this includes clerks, secretaries and other personnel who serve in the courtroom as well as employees of Probation Departments, counselors serving in Crisis Intervention Units, and other employees of the Judiciary who work in some capacity that supports the work of judges.

Activities of the Task Force

The Task Force devoted its attention initially to an extensive program of research. The research effort consisted of the following:

1. Compilation of relevant statutes and case law in New Jersey, the other states and abroad; and collection of legal essays, monographs and other docuents.

2. Surveys of all of the state's judges, court interpreters, bilingual court support personnel and deaf persons who have been to court as witnesses, plaintiffs or defendants.

3. Interviews of all Trial Court Administrators, several Division and Section heads at the Administrative Office of the Courts, a few court interpreters, and several bilingual court support personnel.

4. Linguistic evaluation of technical skills of persons presently serving as Spanish-English court interpreters in the state (a formal, structured analysis of the quality of current court interpreting conducted by expert consultants).

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[5] See page v, *supra*, for the members' names, affiliations and locations.

5. Questionnaires disseminated to heads of the offices of County Prosecutors, Public Defenders, Legal Aid and Legal Services, and bilingual attorneys.

6. Field visits to gather information regarding interpreting services in Connecticut (which has a unified court system with a Chief Interpreter and a cadre of full-time, official interpreters assigned throughout the state) and the United States District Courts (Southern District of New York and Mr. Jon Leeth, Head of the Office of Court Reporting and Interpreting Services, Administrative Office of the United States Courts).

7. Extensive correspondence and telephone contact with administrators of interpreting services at the United Nations, the State Department, the Federal Bureau of Investigation, state and local court systems; experts on the theory and practice of interpreting and translating.

8. Review and analysis of testing procedures used by the New Jersey Department of Civil Service for interpreting and bilingual titles.

9. Comments from community organizations, academicians, attorneys, and others in the private sector, especially linguistic minorities.

These research and information-gathering activities resulted in the following products which were given to each member of the Task Force:

1. A series of background reports. Twenty-three separate reports were envisioned by the Task Force (see page 18 *infra* for the original list). At the time of this writing, nineteen background reports have been completed.

2. A comprehensive resource manual This manual of over 1,800 pages contains landmark cases, research reports, essays in law journals, newspaper and magazine articles, and other information.

Five committees were established to review the information collected, identify key issues, document major findings and formulate recommendations. Each member of the Task Force served on one or more of the following committees:

1. Administration and Organization Committee;
2. Court Support Services (Probation) Committee;
3. Ethics Committee;
4. Legal Committee; and
5. Qualifications, Certification and Training Committee.

Overview of the Final Report

This Final Report has been drafted as a summary report. Even so, the report is lengthy. The primary aim of the report is to fulfill the mandates of the Chief Justice. However, the Task Force early concluded that there is a widespread need for education on the technical aspects of court interpreting, legal translating and the cross-cultural, cross-linguistic delivery of services. Accordingly, the secondary purpose of this report is to educate.

The remainder of the Final Report consists of four additional chapters and an Appendix. Chapter 3, Critical Issues, summarizes key aspects of effective communication, fundamental legal and administrative issues, and the professional responsibility of persons who work as court interpreters or legal translators, or who serve in some other bilingual support position.

Chapter 4 summarizes the Task Force's findings. The recommendations are highlighted in Chapter 5 and are developed more fully in the Appendix which contains proposed Standards on Court Interpreting and Legal Translating in New Jersey and recommended legislation for the consideration of the Legislature and Governor. The proposed policy and procedures manual contains explicit guidelines to be followed in the administration of court interpreting, legal translating, bilingual and bilingual/multicultural services. The last chapter, Strategies for Implementing the Recommendations, provides supplementary information to support evaluation of the recommendations and to guide the development of strategies for implementing them.

The Supplement to the Final Report contains a copy of each of the completed background reports as well as a few other documents. These are provided for the reader who desires to consult the sources of the footnotes of this report or pursue additional information that has not been included in this report.

BACKGROUND REPORTS OF THE TASK FORCE

1. Shorthand Reporting in New Jersey (Jul. 1982)
2. The Use of Interpreters for the Deaf in the New Jersey Courts (Nov. 1982)
3. Civil Service Testing for Spanish Titles and Variants (Dec. 1982)
4. Legislative History of Court Interpreting in New Jersey (May 1983)
5. Current Judicial Administrative Policy Governing Interpreting, Translations and Cross-cultural Services (June 1983)
6. New Jersey Case Law on Legal Interpreting (July 1983)
7. Vicinage-Level Administration of Interpreting and Translation Services: A Survey of the Trial Court Administrators (Aug. 1983)
8. Language Rights in the United States: A Compilation of State and Federal Laws on Interpreters, Translators and Bilingual Services (Feb. 1984)
9. The Practices of Interpretation and Translation in New Jersey's Courts, the Judges' Point of View: A Survey of the Trial Judges (Dec. 1983)
10. Perspectives of Bilingual Attorneys on Current Interpreting Services in New Jersey (Apr. 1984)
11. Perspectives of County Prosecutors on Current Interpreting Services in New Jersey (June 1984)
12. Perspectives of Public Defenders and Legal Services on Current Interpreting Services in New Jersey (June 1983)
13. Language Rights in New Jersey Outside of the Judicial Branch*
14. Demographic Overview of Persons Residing in New Jersey Who May Require Bilingual Court Services (May 1984)
15. The Interpreters' Point of View: A Survey of New Jersey's Court Interpreters (Dec. 1984)
16. Survey of Court Support Personnel (Apr. 1985)
17. Survey of Language Rights in Foreign Countries*
18. The Consumer's Perspective: A Survey of the Perceptions of Deaf and Hearing Impaired Persons Who Have Been to Court (Dec. 1984)
19. Summary of Relevant Findings from Linguistics, Sociolinguistics, Psycholinguistics and the Plain English Movement*
20. The Cross-Cultural Delivery of Human Services: A Summary of Issues Based on a Review of the Literature (May 1985)**
21. Interpreting and Translating as Professions (Jan. 1984)
22. A Day in the Life of New Jersey's Court Interpreters--An Evaluation of Current Spanish-English Court Interpreting in New Jersey (Mar. 1984)
23. Miscellaneous Collected Documents and Mini-reports (Apr. 1985)

*This report will not be written. Staff have the data should anyone want to see them.

**This report had not been written at the time the Final Draft was reviewed by the Task Force.

CHAPTER THREE

CRITICAL ISSUES

Introduction

This chapter describes the critical issues which arise when linguistic minorities appear in the courts. The fundamental issue is effective communication, the keystone for protecting individual and public rights and adjudicating disputes. The determination of these rights occurs in a legal framework circumscribed by organic, statutory and case law as well as rules of administration, practice and procedure. The services required for assuring these rights can substantially affect the efficiency of the courts as well as the public's confidence in the Judiciary. Accordingly, these services must be rendered by qualified persons who adhere to an established code of ethical conduct.

Effective Communication

Two Communicative Environments

Communication within the Judiciary can be characterized as occurring primarily in two distinct environments. First, proceedings in open court depend on effective communication for presenting arguments and motions and eliciting evidence (attorneys for all sides), presenting evidence (witnesses), understanding evidence (attorneys, jurors, judges, criminal defendants and other parties), managing the arguments and tactics of the attorneys for both parties (judges), making a permanent record of the proceedings (shorthand reporters and sound recording operators), maintaining a secure and orderly courtroom (Sheriff's officers and court aides), controlling the movement of prisoners (Sheriff's officers), and managing the flow of documents and cases (court clerks).

All other communication occurs almost exclusively outside of the courtroom. Attorneys consult with clients (in counsel's office, at a jail or outside the courtroom, for example), the public seeks information about cases or services (calling or walking in seeking information from receptionists, telephone operators, clerks, secretaries, and others), employees of the Judiciary conduct investigations through interviews, analysis of records and other inquiries (Family Court intake, bail, P.T.I., child custody, child support intake, predisposition and presentence reports), and other court employees (as well as volunteers) supervise persons under some form of court control and often contact families of such persons as well as agencies outside of the Judiciary (probationers, P.T.I. clients, bail releasees, persons under child support enforcement and/or alimony orders, families in crisis). In addition, there are hearings presided over by arbitrators, referees and surrogates and by volunteers (Juvenile Conference Committees and Child Placement Review Boards). Finally, the quality of a case being heard in a courtroom is dependent in part upon the effectiveness of other communications between major characters (especially police-arrestee conversations[1] and conversations between police, prosecutors or counsel and witnesses).

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[1] It is interesting to note that Chief Justice Warren emphasized the need for effective communication at this stage when he wrote that an accused person "must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored." Miranda v. Arizona, 348 U.S. 436,467 (1965) (emphasis added). Research by linguists and anthropologists has shown that many persons do not understand the Miranda warnings and are thereby unable to exercise their rights fully. Some of the factors affecting comprehension are age and extent of prior contact with the judicial system (T. Grisso, JUVENILE WAIVER OF RIGHTS--LEGAL AND PSYCHOLOGICAL COMPETENCE [1978]) and hearing disability and corresponding literacy levels of deaf persons ("...only about 10% of prelingually deaf adults read at 6.0 grade level or above," M. Vernon and J. Coley, "Violation of Constitutional Rights: The Language Impaired Person and the Miranda Warnings," 11 J. OF REHABILITATION OF THE DEAF 1 [1978]). Even when a subject knows the individual words of the warning, the

Languages of the Two Environments

The nature of communication in these two environments differs considerably. The main distinction between the communicative features of the two milieu can be characterized by the nature of the language used therein. Linguist Roseann Dueñas González[2] postulates that the language of the courtroom is actually an "intralingual variety of English which may be called the 'register of the courtroom.'"[3] The research leading to this conclusion was

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conceptual complexity of the passage and the lack of the necessary background knowledge required to fully understand the meaning of the words can prevent the level of understanding guaranteed under Miranda (J. Gumperz and C. O'Connor, REPORT ON JUVENILE COMPREHENSION OF MIRANDA RIGHTS PARAGRAPH 24 [1981]). Another scholar has found that the warning requires a thirteenth grade level of aural comprehension for one hundred percent comprehension. E.J. Briere, "Limited English Speakers and the Miranda Rights," 12 TESOL Q. 235 (1978).

[2] Dr. González is an Associate Professor in the English Department, Director of the Graduate Program in English as a Second Language and Director of the Writing Skills Improvement Program at the University of Arizona. She was also a member of the team of experts who developed the Federal court interpreter certification examinations. Under her leadership, the University of Arizona has assumed the development and administration of the examinations under contract to the Administrative Office of the United States Courts.

[3] A "register" is best defined, says Dr. González, as the product of three dimensions: 1. "Field of Discourse: the purpose for which the speaker employs languge, such as persuasion, discussion, reporting [citations omitted]. 2. Manner of Discourse: the relations among the participants in a language activity, which can be described...as frozen, formal, consultative, casual, and intimate [citations omitted]. 3. Mode of Discourse: the medium of communication, primarily a distinction made between spoken and written language....[citations omitted]. R.D. González, THE DESIGN AND VALIDATION OF AN EVALUATIVE PROCEDURE TO DIAGNOSE THE ENGLISH AURAL-ORAL COMPETENCY OF A SPANISH-SPEAKING PERSON IN THE JUSTICE SYSTEM 64-65 (1977). Chapter 3 (pp. 64-87) of her dissertation presents an extensive discussion of "The Register of Courtroom English" and reports the data upon which she based at this conclusion.

The classic study in this field is D. Mellinkoff, THE LANGUAGE OF THE LAW (1963). Mellinkoff claimed, "The language of the law is a convenient label for a speech pattern with a separate identity." Id. at relied upon substantially in Seltzer v. Foley,[4] a case in which the validity of the Federal Court Interpreters Examination was challenged by two persons who had twice failed the examination. Judge Milton Pollack, relying upon Dr. González's expert witness testimony, wrote the following:

> The language level in the courts is high due to the fact that lawyers, expert witnesses and judges represent groups of professionals who have had at least 15 to 20 years of formal classroom education....[5]
>
> Her conclusion was that it was appropriate to talk of courtroom language as a separate register of English, a separate brand of English which had its own characteristics, its own set of vocabulary.... It has an overall difficulty level ... of the fourteenth grade which means that a person has to have competence of understanding language, an intellectual understanding of the fourteenth grade level which is a sophomore in college level.[6]

The language of the law is a composite of many characteristics that give it its unique quality.[7] These characteristics have the effect, however, of

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3. While "The great mass of language used by lawyers is ordinary English," "Laymen are certain that law language is not English." Id. at 9-10. Law language is something apart from ordinary English. Helpful overviews of and introductions to studies of the language of the law are presented by B. Danet, "Language in the Legal Process," 14 LAW AND SOCIETY REV. 445 (1980) and W.M. O'Barr, "Language and the Law," in LANGUAGE IN THE USA 386 (C.A. Ferguson and S.B. Heath eds. 1981). The most comprehensive bibliography is J. N. Levi, LINGUISTICS, LANGUAGE, AND LAW: A TOPICAL BIBLIOGRAPHY (1982).

[4] 502 F. Supp. 600 (S.D.N.Y., 1980).

[5] Id. at 604 n.3.

[6] Id. at 606.

[7] Mellinkoff identifies nine major chararacteristics of the language of the law: "(1) Frequent use of common words with uncommon meanings," "(2) Frquent use of Old English and Middle English words once in common use, but now rare," "(3) Frquent use of Latin words and phrases," "(4) Use of

making this sublanguage so specialized as to restrict comprehensibility to professionals and highly experienced laypersons. For example, its vocabulary is so specialized that "words used in simple hearings never appeared or appeared three times or less in a normal million words of print,"[8] a reality that makes the vocabulary incomprehensible to many laypersons.

The unfamiliar nature of legal language has gained increasing recognition in recent years. For example, a major consumer movement, the plain English movement, has been seeking to simplify legal language and make legal language more understandable for the average layperson.[9] Second, linguistic research has found that standard jury instructions are often incomprehensible to jurors because of the esoteric vocabulary, special grammatical constructions and unusual discourse structures of this "distinct sublanguage."[10]

By contrast, the nature of communication that takes place outside of the courtroom is typically much less formal and partakes much less of the lan-

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Old French and Anglo-Norman words which have not been taken into the general vocabulary," "(5) Use of terms of art," "(6) Use of argot," "(7) Frequent use of formal words," "(8) Deliberate use of words and expressions with flexible meanings," and "(9) Attempts at extreme precision of expression." Supra n. 3, at 11.

[8] Seltzer, supra n. 4, at 606 n.4.

[9] For example, there is a need to write contracts in simple English so consumers can understand the contract and know what they are agreeing to. See, e.g., the Plain Language Act (L. 1980, c. 125) and the Life and Health Insurance Policy Language Simplification Act (L. 1979, c. 167) for examples from New Jersey and B. Black, "A Model Plain Language Law," 33 STANFORD L. REV. 255 (1981) for a broader view.

[10] See, for example, R. Charrow and V. Charrow, "Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions," 79 COLUM. L. REV. 1306,1359 (1979).

guage of the law. To be sure, the language of the law certainly appears in many of these other contexts, especially in consultations between attorneys and their clients. In addition, services rendered by human service professionals can be hampered by the use of the special languages of other professions which set practitioners apart from clients.[11] Even so, the extremely formal and technical language of the courtroom gives way to significantly greater degrees of informality. The communication characteristic of such interactions is much more familiar to participants.

Clients with Limited Communicative Competence in English

Add to the inability of many persons to comprehend the specialized sublanguage of legal proceedings the fact that many persons appearing in the courts speak or understand English poorly or not at all--and the potential for miscommunication and incomprehension is substantially increased. This additional obstacle significantly affects communication in both contexts, although the nature and effects of such incomprehension can vary from the formal proceedings of the courtroom to the comparatively informal interactions outside of the courtroom.

Deaf and hearing impaired clients present diverse communicative abilities to the Judiciary. Language skills of hearing impaired persons range widely, as the following list of different types of communicative skills among the hearing impaired illustrates:[12]

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[11] S.B. Heath, "The Context of Professional Languages: An Historical Overview," in LANGUAGE AND PUBLIC LIFE 102 (Georgetown University Round Table on Languages and Linguistics, J.E. Alatis and G.R. Tucker eds., 1979).

1. Persons who speak American Sign Language (ASL);
2. Persons with minimal language skills, usually their own gesturing systems;
3. Persons who use signed English (which is very different from ASL);
4. An oral group which prefers to read lips and may or may not speak English well enough to be understood; and
5. Persons from communities which speak a language other than English, *e.g.*, deaf persons in the Spanish community.[13]

Since all of these persons now enjoy a right to an interpreter in New Jersey's courts,[14] there is no need to distinguish among them for levels of English "speaking" abilities at this point.

However, persons who are not deaf or hearing impaired and whose mother tongue is not English do not yet enjoy fully the protections afforded the deaf and hearing community. This is due in part to the fact that there is no standard of minimum acceptable English language proficiency that can help judges and others distinguish between those persons who have a right to an interpreter or bilingual assistance and those who do not. Since the English proficiency of such persons ranges from those who speak no English at all to those who have come to speak it at the level of natives, it is critical that various types of English-language competence for these persons be clarified in some detail.

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[12] The degree to which persons within each of the groups know English also varies substantially. These categories are not necessarily mutually exclusive. Some hearing impaired persons have two or more of these language skills. Interview with Richard Herring, Director, and Rita Jo Scarcella, Coordinator, Interpreter Referral Service, New Jersey Division of the Deaf, in Trenton (January 14, 1985).

[13] See, *e.g.*, *State v. Gonzalez*, 186 *N.J. Super*. 609 (Law Div. 1982), a case which invovled a deaf mute of Hispanic origin.

[14] Act of Jan. 17, 1984, ch. 564, 1983 N.J. LAWS 3179. This act is codified at *N.J.S.A*. 34:1-69.7 *et seq*.

Bilingual persons may be distinguished first according to the relationship of the two languages in terms of dominance. On the one hand, some bilinguals command both languages at the level of native speakers and are called proficient bilinguals.[15] These persons can communicate effectively as native speakers in both languages and have two language systems, neither of which dominates. On the other hand, subordinant bilinguals have just one language system and tend to impose upon English, their second language, "first-language translation equivalents." The words may be English, but the grammar, vocabulary, and symbols are first-language realities superimposed upon the English language. The dominant language is said to interfere with attempts to communicate in the inferior language.[16] While there is no language barrier for proficient bilinguals, a very real language barrier is present for subordinant bilinguals.[17]

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[15] The distinctions discussed here are drawn from the work of Luis R. Marcos, a psychiatrist who has extensively studied the function of linguistic competence in the delivery of psychiatric services. "Linguistic Dimensions in the Bilingual Patient," 36 AM. J. OF PSYCHOANALYSIS 347 (1976). See F. Grosjean, LIFE WITH TWO LANGUAGES: AN INTRODUCTION TO BILINGUALISM (1982) for a broader overview of bilingualism.

[16] The ways the dominant language can interfere with the second language are myriad. William F. Mackey lists them as cultural, lexical, grammatical, and phonological (intonation, rhythm, catenation, and articulation) and discusses them at length in "The Description of Bilingualism," in READINGS IN SOCIOLOGY OF LANGUAGE 554,569-583 (J.A. Fishman ed. 1968).

[17] There is a critical issue here. What is the threshold of minimum proficiency and communicative competence in the English language that a person whose mother tongue is not English should possess before being expected

> Evidently, communicating in the second language is going to require more elaborate and troublesome mental work than communicating in the first language. Not only are number of words available, capacity for grammatical ordering, and facility in articulating the words going to be inferior in the second language but also imposed upon the subordinate bilingual patient by the language barrier is the additional mental operation of constant translation from or into the mother tongue.[18]

Marcos indicates that the obstacles to effective communication that arise in serving subordinate bilinguals include (1) the tendency to concentrate on "how they say things and not so much in what they are saying," (i.e., a loss of content and affect to style and congruence), and (2) interference "with the patient's ability to understand and derive any meaning from the therapist's vocal or paralinguistic cues, such as intonation, pauses, and emotionality."[19]

At least one implication for the administration of justice is obvious. For example, a subordinant bilingual witness appears likely to be less persuasive insofar as responses may be hesitant, awkward or even nonsense in English. If such a witness is also the defendant in a criminal trial, this can result in a loss of credibility.[20]

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to function effectively in a courtroom? One linguistically sound screening device for determining communicative competence of persons whose mother tongue is Spanish has been developed by González. Supra n. 3.

[18] Marcos, supra n. 15, at 348.

[19] Ibid.

[20] Linguist Paz Buenaventura Naylor found this in a trial of two Philippine nurses. She found several examples of linguistic interference in the nurses' testimony and believed the interference played a significant role in undermining the credibility of their testimony. She concluded, "The

The second distinction among bilinguals focuses on the context within which each language was learned. Persons are called _compound_ bilinguals if they have learned both languages in the same context, while persons who acquire the languages in different contexts are called _coordinate_ bilinguals. The different contexts that characterize coordinate bilinguals are _place_ (for example, being raised speaking one language in a cultural setting distinct from the cultural setting in which English was learned) and _time_ (learning the first language during infancy and the second at a later time). The first language, then, not English, will likely be the language of the heart, the language resorted to when one is anxious, fearful or otherwise under stress. The coordinate bilingual has a primary experiential world shaped by this mother tongue. By contrast, the compound bilingual appears "to have alternate and not necessarily congruent experiential inner worlds."[21] Neither language is _the_ mother tongue; each can serve as the language of recourse during stressful times.

Some of the implications of this distinction for the courts should be noted, too. First, appearance before a judge is a stressful event for almost everyone. When a person is a coordinate bilingual, the stress may be exacerbated due to the language barrier. Such persons are likely to prefer to speak

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non-native speaker of English cannot be said to be treated equally and fairly in legal proceedings if he or she is linguistically handicapped and when the effects of second-language use redound to the weighting of his or her testimony in the direction of non-credibility, whatever the actual facts of the case may be. "LEGAL TESTIMONY AND THE NON-NATIVE SPEAKER OF ENGLISH: THE PROBLEM OF LINGUISTIC AND CULTURAL INTERFERENCE IN INTERETHNIC COMMUNICATION 15 (1979) (unpublished manuscript).

[21] Marcos, _supra_ n. 15, at 348.

in their native tongue since it is familiar and comfortable. Further, the stress may cause temporary lapses in English language skills with obviously deleterious effects on testimony. In addition, when such persons are forced to function in a second language against their will, they may feel that the system is at best insensitive and at worst discriminatory.

The third criterion by which bilinguals may be distinguished consists of the specific context or situation in which the respective languages are used. Unspecialized bilinguals use either language interchangeably regardless of the context or situation. By contrast, specialized bilinguals use one or the other language in specific domains. Spanish may be spoken at home, but English is spoken at work. The mother tongue is used in intimate conversations, but English is used in the academic or business context.[22]

Two implications for the administration of justice are immediately apparent. First, specialized bilinguals who have no comparable precedent for speaking English in the courthouse or in conversation with a person of authority (e.g., a Probation Officer) are likely to have difficulty making the transition effectively. Even though they may be able to speak English well enough at their place of employment, they may not do so in the courtroom. Second, during the course of interviews, the specialized bilingual may be less expressive when forced to discuss in English realities normally discussed in Spanish (e.g., family life). This can result in being perceived prejudicially, being viewed and reported as uncooperative or reluctant to divulge certain information.

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[22] Marcos, supra n. 15, at 349-350. Marcos also presents a fourth criterion, but it will not be discussed here.

With these distinctions in mind, persons who are proficient, compound and unspecialized bilinguals probably have no need to a court interpreter or other bilingual assistance. They are very likely to function competently inside and outside of the courtroom. However, persons who are subordinate, coordinate and/or specialized bilinguals are more likely to need a court interpreter or other bilingual assistance. If universal assistance is not granted to such persons, then an objective mechanism must be developed that assesses the bilingual person's English-language competence to determine when it must be provided.[23]

Effects of Culture on Communication

The last major feature of communication which must be identified is the role played by the cultures of those who are attempting to communicate.[24]

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[23] Some research along these lines has already been conducted. One instrument has been designed by González, *supra* note 3, and another is being designed by Dr. Guadalupe Valdés, a professor in the Department of Foreign Languages at the New Mexico State University. "Determining the Need for an Interpreter: A Pilot Project in Assessing the Communicative Competence of Non-Native English Speakers" (1982) (unpublished manuscript).

[24] The major features of communication which are discussed here are only some of the factors which affect communication. Other dimensions which affect communication include *race* (See D.L. Pennington, "Black-White Communication: An Assessment of Research," in HANDBOOK OF INTERCULTURAL COMMUNICATION 383 [M.K. Asante, E. Newmark and C.E. Blaked eds. 1979]), *class* (See J. Daniel, "The Poor: Aliens in an Affluent Society: Cross-Cultural Communication," in INTER-CULTURAL COMMUNICATION--A READER 89 [L.A. Samovar and R.E. Porter eds. 1976]; J. Nist, "The Language of the Socially Disadvantaged," in INTERCULTURAL COMMUNICATION--A READER 204 [L.A. Samovar and R.E. Porter eds. 1976]; J.R. Edwards, "Judgements and Confidence in Reactions to Disadvantaged Speech," in LANGUAGE AND SOCIAL PSYCHOLOGY 22 [H. Giles and R.N. St Clair eds. 1979]; and S. Adler, POVERTY CHILDREN AND THEIR LANGUAGE: IMPLICATIONS FOR TEACHING AND TREATING [1979]), and *dialect* (For example, the persuasiveness of an argument, sociolinguists have found, depends both on [1] whether the speaker is someone with whom a hearer can identify and [2] whether the

Communication is a cultural as well as a linguistic phenomenon. When persons whose mother tongue is not English appear in court, they are likely to have been raised in a culture different from that of the persons employed by the courts. Communication, then, occurs not only across languages, but across cultures as well--and this represents a barrier which is insufficiently understood.

Culture lays behind words that are spoken and the norms, value systems and symbols of the culture shape the meaning of those words.[25] When persons from different cultures attempt to communicate, the norms, value systems and symbols which shape the meaning of words they speak often differ. This concept is expressed quite clearly by two professors of speech communication who assert that "the chief problem associated with intercultural communication is error in social perception brought about by cultural variations that affect the perceptual process." They go on to explain:

> The attribution of meaning to messages is in many respects influenced by the culture of the message decoder. When the message being interpreted was encoded in another culture, the cultural influences and experiences that produced that message may be entirely different from the cultural influences and experiences that are being drawn upon to decode the message. Consequently, grave errors in meaning may arise that are not intended nor really the fault of the communicators. They are the result of entirely different backgrounds being unable to accurately understand one another.[26]

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speaker's argument is presented "in a standard, accepted voice" or dialect. H. Giles and P.F. Powesland, SPEECH STYLE AND SOCIAL EVALUATION 99 [1975]).

[25] Noted anthropologist Edward T. Hall sees "culture in its entirety as a form of communication." THE SILENT LANGUAGE 51 (1959).

[26] R.E. Porter and L.A. Samovar, "Communicating Interculturally," in INTERCULTURAL COMMUNICATION--A READER 23 (1976).

Not only does culture mold the words used in a conversation, it also structures conversation itself.

> Conversation is culturally organized in that the options people choose in their ways of acting communicatively and interpreting the communicative actions of others are options learned from and shared with others outside the social occasion in which the communicative knowledge is being practically employed. Cultural conventions or norms provide definitions of what is appropriate and intelligible in communicative action.[27]

Culture also shapes the paralinguistic[28] aspects of communication. The significance of the non-verbal dimension of communication becomes clear when one recognizes that scholars estimate that most of what is communicated in a conversation is not verbal.[29] Facial expressions, gestures, amount and kinds of emotional expressions which are permitted, intonation, pitch, rhythm, use of space, clothing, amount of eye contact, rate and inflection vary from culture to culture.[30]

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[27] F. Erickson and G. Shultz, THE COUNSELOR AS GATEKEEPER--SOCIAL INTERACTION IN INTERVIEWS 7 (1982).

[28] Paralinguistics has to do with the non-verbal phenomena which surround acts of communicating. It is variously known as body language, non-verbal communication, and suprasegmental components of communicative acts.

[29] "Ray Birdwhistell, a pioneer in nonverbal studies, has estimated that only about 30 percent of what is communicated in a conversation is verbal--and this is based on two persons from the same culture speaking their native language. In a cross-cultural conversation, it is obvious that both individuals must rely even more on nonverbal behavior." J.P. Fieg and L.C. Yaffee, ADJUSTING TO THE USA: ORIENTATION FOR INTERNATIONAL STUDENTS 53-54 (1977).

Since people communicate through culturally determined means and in response to culturally determined cues, persons from two different cultural backgrounds who attempt to communicate may find the same word or gesture to have an entirely different meaning. The miscommunication that can occur is especially vital both inside and outside of the courtroom since inaccuracies can have dire consequences. For example, in the Anglo-American culture, if a defendant averts his eyes, he may be presumed to have something to hide. However, averting the eyes is a sign of respect in many Spanish-speaking cultures. Without cross-cultural awareness, such a sign of respect could be mistaken in the courtroom or, for example, in a presentence interview, for guilt or evasion.[31] Such misinterpreted paralinguistic behavior can result in erroneous attributions of guilt by jurors and allegations of untrustworthiness or evasiveness by Probation Officers writing presentence reports or supervising clients.

There are psychocultural influences on the process of communicating interculturally in addition to the semantic and paralinguistic ones. Gudykunst and Kim divide psychocultural influences into two groups: cognitive processes and attitudinal influences.[32] The cognitive process that is most relevant to the Task Force's work is the tendency of the human brain to categorize discrete elements into groups in order to make sense of the information that it receives and processes. Stereotypes are a form of such categorization which masks differences among individual persons. The stereotypes one holds affect communication substantially. When accurate, one's ability to communicate with a culturally different person is enhanced. However, when inaccurate, behaviors of culturally different persons are not likely to be interpreted accurately and such persons will not become known as individuals.[33]

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[30] Porter and Samovar, supra n. 26, at 21-23 ; Adler, supra n. 24, at 59-68; and W. G. Moulton, "The Nature of Language," 102 DAEDALUS 17,24-25 (1973).

[31] This is a very common example. E.S. Levine and A.M. Padilla tell the story of a student who was suspended from school when accused of being disrespectful of a teacher. The teacher resented the fact that the student bowed her head every time she addressed the pupil and interpreted it as a sign of disrespect. CROSSING CULTURES IN THERAPY--PLURALISTIC COUNSELING FOR THE HISPANIC 226 (1980). For other examples, see R.J. Lee, HISPANICS: THE ANONYMOUS PRISONERS 28 (New Jersey Correctional Master Plan, Vol. IV, Aug. 1976).

Attitudinal influences "predispose us to behave in a positive or negative manner toward various objects or people."[34] The first attitude these authors present is ethnocentrism. Ethnocentrism, which may be conscious or unconscious, "refers to our tendency to identify with our in-group (*e.g.*, ethnic or racial group, culture) and to evaluate out-groups and their members according to its standards."[35] This attitude tends to result in viewing one's own culture or way of doing things as superior or right and other cultures and their way of doing things as inferior or wrong.[36] While ethnocentrism is natural and can serve positive functions such as strengthening in-groups, it can also be dysfunctional. The attitude of ethnocentrism is dysfunctional when it leads to hostility toward or conflict with an out-group, involves name-calling or slurs, or introduces communicative distance through indifference, avoidance or disparagement. Without understanding or wanting to understand the behavior of others in terms of their own cultural norms, effective communication is likely to be impossible.[37]

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[32] Many other sources identify the same issues as Gudykunst and Kim. They are used here because their presentation is concise and does a good job of reflecting the findings of scholars in the field of intercultural communication. W.B. Gudykunst and Y.Y. Kim, COMMUNICATING WITH STRANGERS--AN APPROACH TO INTERCULTURAL COMMUNICATION 84-103 (1984). See 20 *B.R.* 20-23,35-43 (May 1985).

[33] *Id.* at 84-87.

[34] *Id.* at 91.

[35] *Id.* at 92.

The second attitudinal influence on the process of intercultural communication Gudykunst and Kim identify is prejudice. Prejudice is also natural, but it can lead to misinterpretations of and inaccurate predictions about strangers' behavior. High degrees of either ethnocentrism or prejudice increase the probability of miscommunication.

Conclusions

The nature of communication which prevails in the courtroom is quite different from that which occurs outside of the courtroom. The technical,

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36 The generally condescending attitude toward persons with foreign accents or who speak only or primarily a foreign language is partially a function of the relative prestige of English in this country and the world. The very fact that a person does not function well in the more prestigious language, i.e., English, by itself tends to attribute inferior status to persons who speak accented English See THE SPREAD OF ENGLISH: THE SOCIOLOGY OF ENGLISH AS AN ADDITIONAL LANGUAGE (J.A. Fishman, R.L. Cooper and A.W. Conrad eds. 1977) as well as LANGUAGE IN THE USA (C.A. Ferguson and S.B. Heath eds. 1981).

37 Gudykunst and Kim, supra n. 32, at 92-97.

specialized and sophisticated language of the courtroom leaves many laypersons, be they witnesses, defendants or jurors, confused and bewildered. This obstacle to effective communication is often aggravated by the fact that many persons having business with the courts speak little or no English. Finally, the communicative distance between linguistic minorities and the English-speaking majority is further widened by numerous cultural influences. Culture often invests similar words with different nuances, structures conversations, and determines the non-verbal aspects of communication. There are also psychocultural influences that can interfere with effective cross-cultural communication, the major ones being stereotypes, ethnocentrism and prejudice.

Most persons are not aware of the aspects of intercultural communication which have been discussed. Since the average person is unaware of the potential obstacles culture presents to effective communication, it is no surprise that institutions are also likely to be unaware of such obstacles. This often results in a failure, albeit unknowing, to recognize, confront and surmount such barriers both inside and outside the courtroom. With these aspects of communication in mind, the key legal issues will now be addressed.

Fundamental Legal Issues

The Task Force has identified three major legal issues--constitutional and human rights as well as the integrity of the fact-finding processes. Each is discussed in turn.

Protecting Constitutional Rights

The relevant rights are generally rooted in two amendments to the United States Constitution: the Sixth Amendment's rights to be informed of the nature and cause of a criminal accusation, to be confronted with the state's witnesses, and to have the assistance of counsel; and the Fourteenth Amendment's clauses extending due process and equal protection of the laws to the states. The rights articulated under these amendments may be subdivided into those applicable only to criminal defendants and those applicable to all litigants. The main reason for distinguishing between these two groups of litigants is that the former are protected by a considerable and growing body of case law while the latter do not yet generally enjoy such protections. The following sections will summarize rights presently established in case law for criminal defendants and argue for the establishment of certain rights for all litigants.

At least three areas of rights which have been established for criminal defendants are central to the issue of communicative competence.[38] First, under the right to the effective assistance of counsel, the courts have held that a criminal defendant has a right to (1) effective communication with counsel during pre-trial preparation and (2) effective communication with counsel throughout the trial. These rights have the effect of requiring interpreters to facilitate communication between counsel and defendants. In addition, there is precedent for prohibiting counsel from interpreting for his or her client since such activity inhibits the function of defending the client. Further, these rights ensure that a defendant can communicate unobtrusively with counsel (i.e., not having to stop a trial, borrow a witness interpreter and then consult with the attorney, calling attention to the defendant that would not be called were the defendant able to speak to counsel in English).

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[38] This discussion relies is based on the following cases: State v. Natividad, 111 Ariz. 191, 526 P.2d 730 (1974); People v. Carreon, 198 Cal. Rptr. 843 (Cal. App. 5 Dist. 1984); United States ex rel. Negron v. State of New York, 434 F.2d 386 (1970); Application of Murga, Okla., 631 P.2d 735 (1981); and United States v. Carrion, 488 F.2d 12 (1973). Helpful essays in law journals include the following: Note, "The Right to an Interpreter," 25 RUTGERS L. REV. 145 (1970); W.B.C. Chang and M.U. Araujo, "Interpreters for the Defense: Due Process for the Non-English-Speaking Defendant," 63 CALIF. L. REV. 801 (1975); A.J. Cronheim and A. H. Schwartz, "Non-English-Speaking Persons in the Criminal Justice System: Current State of the Law," 61 CORNELL L. REV. 289 (1976); D.S.

Second, the right to confront and cross-examine adverse witnesses cannot be exercised if one cannot understand what adverse witnesses are saying. Therefore a defendant has a right to verbatim interpretation of testimony given by adverse witnesses.

Third, the right to be present at all critical stages (including, e.g., arrest and interrogation, preliminary hearing, arraignment, other pre-trial proceedings and sentencing) is a right which cannot be exercised if one cannot understand everything that is said at all times. This has been held to mean a right to continuous, simultaneous interpretation throughout the proceedings.

Groisser, "A Right to Translation Assistance in Administrative Proceedings," 16 COLUM. J.L. & SOC. PROBS. 469 (1981). See also Address by Hon. Kevin Thomas Duffy, American Translators Association (Sep. 20, 1984) (Court Interpreters and Translators Association Monograph #6).

Otherwise, a trial "comes close to being an invective against an insensible object...."[39]

These rights have been protected constitutionally in California and New Mexico[40] and statutorily in at least two jurisdictions. First, the Federal Court Interpreters Act requires Federal courts to "utilize the services of the most available certified interpreter, or when no certified interpreter is reasonably available..., the services of an otherwise competent interpreter, in any criminal or civil action initiated by the United States in a United States district court...."[41] Second, the California Legislature recognized the need for qualified interpreters and requested the Judicial Council of California to evaluate the language needs of California's citizens and residents in relation to the courts. Once the report was received, the Legislature passed an act which directed the Judicial Council of California to adopt rules which would implement the act.[42] Although the act did not provide direction with respect to the circumstances under which court interpreters would be required in the courts, the Judicial Council issued the following standard:

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[39] *Natividad*, *id*. at 733.

[40] CAL. CONST. art. I, §14 and N.M. CONST. art. II, §14.

[41] 28 *U.S.C*. §1827(d). Pub. L. No. 95-539, 921 *Stat*. 2040 (1978). See 8 *B.R*. 311-313 (Feb. 1984) for the text of the statute. The major features of the act, together with an analysis of some of its shortcomings, are reviewed in A. Pousada, "Interpreting for Language Minorities in the Courts," in LANGUAGE IN PUBLIC LIFE 186 (Georgetown University Round Table on Languages and Linguistics, J.E. Alatis and G. R. Tucker eds. 1979). See also M.R. Frankenthaler and B.L. McCarter, "A Call for Legislative Action: The Case for a New Jersey Court Interpreter's Act," 3 SETON HALL LEGIS. J. 125 (1978).

[42] 1978 Cal. Stat. 388. Codified at CAL. GOV'T. CODE §§68560-68564. See 8 *B.R*. 44-45 (Feb. 1984) for a copy of the act.

> An interpreter is needed if upon examination by the court a party or witness is unable to speak English so as to be understood directly by counsel, court, and jury, or if a party is unable to understand and speak English sufficiently to comprehend the proceedings and to assist counsel in the conduct of the case. Separate interpreters may be needed for each non-English speaking party. An additional interpreter may be needed to interpret witness testimony for the court.[43]

Another perspective from which the experience of linguistic minorities in the courts can be viewed is the doctrine of equal access to the courts. The Task Force recognizes that this doctrine is presently restricted in case law to issues surrounding poverty. For example, counsel must be appointed for indigents in civil and criminal matters and fees that prevent an indigent from filing an action must be waived.[44] Now the Courts have not yet declared that indigent litigants in civil cases are entitled to the services of an interpreter supplied by the court, but the Task Force sees compelling arguments to establish such a policy on constitutional grounds.[45] Economic considerations are obviously not the only factors that can effectively foreclose one's access to the courts. Language barriers can also be quite effective at restricting the accessibility of linguistic minorities to the courts and other public services.

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[43] STANDARDS OF JUDICIAL ADM. §18(a). See 8 B.R. 29-32 (Feb. 1984) for all of the standards.

[44] See "Equal Protection and the Indigent Defendant: Griffin and Its Progeny," 16 STAN. L. REV. 394 (1964); G.S. Goodpastor, "The Integration of Equal Protection, Due Process Standards, and the Indigent's Right of Free Access to the Courts," 56 IOWA L. REV. 223 (1970); Comment, "The Heirs of Boddie: Court Access for Indigents after Kras and Ortwein," 8 HARV. C. R. - C. L. REV. 571 (1973); "The Indigent's Right to Counsel in Civil Cases," 76 YALE L. J. 545 (1967); and J.B. Weinstein, "The Poor's Right to Equal Access to the Courts," 13 CONN. L. REV. (1981).

[45] The arguments are eloquently set forth in "Jara v. Municipal Court: The Right to a Court-Appointed Interpreter in Civil Litigation," 67 CAL. L. REV. 573 (1979) and Groisser, supra n. 38.

A policy of equal access to the courts based on linguistic considerations enjoys some precedent. As has already been pointed out,[46] the New Jersey Legislature has already taken numerous steps to make public services accessible to linguistic minorities. The thrust of the legislation is similar to efforts in other states, the most notable of which is California. Perhaps the most comprehensive approach to assuring accessibility of public services to linguistic minorities in this country is California's Dymally-Alatorre Bilingual Services Act.[47] The intent of this Act is especially interesting as it emphasizes the connection between the accessibility of services and communication.

> The Legislature hereby finds and declares that the effective maintenance and development of a free and democratic society depends on the right and ability of its citizens to communicate with their government and the right and ability of the government to communicate with them.
>
> The Legislature further finds and declares that substantial numbers of persons who live, work and pay taxes in this state are unable, either because they do not speak or write English at all, or because their primary language is other than English, effectively to communicate with their government. The Legislature further finds and declares that state and local agency employees frequently are unable to communicate with persons requiring their services because of this language barrier. As a consequence, substantial numbers of persons presently are being denied rights and benefits to which they would otherwise be entitled.
>
> It is the intention of the Legislature in enacting this chapter to provide for effective communication between all

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[46] Supra, pp. 6-9.

[47] 1973 Cal. Stat. 1182. Codified at CAL. GOV'T. CODE §7290 et seq.

> levels of government in this state and the people of this state who are precluded from utilizing public services because of language barriers.[48]

Based on the acts of the New Jersey Legislature discussed in Chapter One, California's Bilingual Services Act and numerous other sources,[49] the Task

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[48] CAL. GOV'T. CODE §7291. See 8 B.R. 37-42 (Feb. 1984) for a copy of the act.

[49] There are four major documents from which these concepts were drawn. The first is a study conducted by the Office for Civil Rights of Region II of the Department of Health, Education, and Welfare: G. de Guevara, N.C. Gold, and J. Rosario, MENDOZA REPORT: ACCESS OF NON OR LIMITED ENGLISH SPEAKING PERSONS OF HISPANIC ORIGIN TO THE NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES (1978). The study was conducted in response to a Title VI, Civil Rights Act, suit filed in Federal Court by eight Hispanic welfare clients. Mendoza et al v. Lavine et al, 74 Civ 4944. The case was settled out of court and the department agreed to employ 400 bilingual social service professionals. S. Viuker, "Dr. Juan Rosario--Old Friend, New Leader for ASPIRA," 18 EQUAL OPPORTUNITY 51,52 (1984/85).

Three suits similar to Mendoza are pending against the Texas Employment Commission. Huerta v. Steen et al, No. DR-83-C.A. 21 (Tex.W.Dist.Ct., Del Rio Div.), Ibarra v. Texas Employment Commission, No. L-83-44-CA (Tex.E.Dist.Ct.) and Dominguez v. Ward, No. B-82-365 (Tex.S.Dist.Ct., Brownsville Div.). Without waiting for the suits to come to trial, the Commissioner embarked upon a program to secure the translation of all forms and develop comprehensive interpreting services and the Commission has since adopted a plan which would implement claimants for whom English is a second language. TEXAS EMPLOYMENT COMMISSION GENERAL PLAN FOR IMPLEMENTATION OF A COMPREHENSIVE LANGUAGE SERVICE PROGRAM (Aug. 8, 1984).

The third report was prepared by the Legal Services Corporation pursuant to a congressional mandate (Pub. L. 95-222, §13, Dec. 28, 1977, 91 Stat. 1623; 42 U.S.C.A. 2996f(h)) to study any special difficulties of access to legal services which may affect certain groups (among them, Native Americans, migrants or seasonal farmworkers, and persons with limited English-speaking abilities). SPECIAL LEGAL PROBLEMS AND PROBLEMS OF ACCESS TO LEGAL SERVICES (no date).

Force contemplates that a policy designed to ensure equal access to court services for linguistic minorities would include the following five features.

(1) Access to services through qualified interpreters. When a linguistic minority client has limited proficiency in English, certified interpreters should be assigned to assist throughout all phases of court proceedings.[50]

Fourth, the Royal (Canadian) Commission on Bilingualism and Biculturalism reviewed the accessibility of Federal services to the bilingual population of Canada and made recommendations geared to ensuring the accessibility of those services to both language groups protected by the Constitution. See especially Part 2, "The Federal Administration," in Book III, The Work World, volume 3A of the ROYAL COMMISSION ON BILINGUALISM AND BICULTURALISM, §§218 et seq. (1969).

Further development of a comprehensive doctrine of equal access would find additional guidance and support from studies of the accessibility other public services. See, e.g., M.M. Close, "Child Welfare and People of Color: Denial of Equal Access," SOCIAL WORK RES. AND ABSTRACTS 13 (Winter 1983).

[50] This already exists for deaf persons coming to official proceedings under Federal and State laws, except support services are not explicitly covered. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, Title V, Sep. 26, 1973 (codified at 29 U.S.C.A. 794), as amended, and N.J.S.A. 34:1-69.7. See the procedures that were established by the Department of Justice when it added Subpart G to 28 C.F.R. §§42.501 et seq. (1980) to assure nondiscrimination on the basis of handicap in programs receiving Federal financial assistance from the Department of Justice. Appendix B, "Analysis of Final Rule," which was published in 45 Fed. Reg. 37,620 (Jun. 3, 1980), but was reserved from publication in C.F.R., provided, for example, "Court systems receiving Federal financial assistance shall provide for the availability of qualified interpreters for civil and criminal court proceedings involving persons with hearing or speaking impairments." It also provides, "Where courts provide specialized assistance with respect to court proceedings, the courts are required to insure that handicapped persons are able to participate in such assistance on an equal basis with nonhandicapped persons. For example, in cases where the courts appoint counsel for indigents, the courts under this subpart are also required to assign qualified interpreters...in cases involving indigent defendants with hearing or speaking impairments to aid the communication between client and attorney. The availability of interpreting services to the indigent defendant would be required for all phases of the preparation and presentation of the defendant's case." Id. at 37,630. Note that legal services programs supported by the Legal Services Corporation have been obligated to render

When court support services are being sought by such clients (or received since many clients do not seek such services, e.g., probation) and bilingual staff are unavailable, existing staff should rely only on qualified interpreters when delivering those services.

(2) Access to court support personnel who are bilingual.[51] When no probation officers, Crisis Intervention Unit counselors or other support staff are bilingual or have ready access to an official interpreter, clients are typically expected to bring an interpreter. Such an obligation substantially exceeds any obligation borne by the English-speaking client and can have the following effects:

(a) Discourage persons from seeking a service to which they are entitled;

(b) Violate clients' rights of privacy by involving third parties (e.g., children, friends, relatives or total strangers) in confidential and intimate discussion with service providers;

(c) Force the client to make extra trips to the place where services are delivered (e.g., he or she has to go home to find someone who can come to interpret);

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themselves accessible to deaf clients by providing interpreters and telecommunication equipment. 45 C.F.R. §1624.4 (1979).

[51] Limited support for this dimension of equal access is provided by Pabon v. Levine, 70 F.R.D. 674 (S.D.N.Y. 1976). The opinion implies that Title VI of the Civil Rights Act of 1964 was violated because the New York State Department of Labor, which had been charged with discriminatory action in assuring the right to unemployment benefits, had failed to provide a sufficient number of interpreters or to print notices and other documents in Spanish. See Frankenthaler and McCarter, supra n. 41, at 129-139 and Groisser, supra n. 38, at 496-498, for discussions of Pabon.

(d) Expose children to adult burdens and to substantial stress when forced to interpret in situations critical to the family's economic or social welfare; remove children from school in order to interpret.

However, some linguistic minorities speak English fluently enough to require no linguistic assistance. The more linguistic minority clients have mastered English, the less likely it will be necessary to require that the person delivering the services to be bilingual. Rather, it will be sufficient in some cases for personnel to be competent in intercultural communication without having to be bilingual.

(3) Access to court support personnel who understand a client's culture. This suggests the necessity of having staff who are not only bilingual, but also multicultural.[52] This is the only way to ensure that communication is effective and that services are delivered in a manner that is culturally appropriate. It is also important to many clients to obtain services from a person from their own ethnic background. However, the need to be served by bilingual/multicultural personnel can be mitigated to the degree the client has become acculturated to Anglo-American culture. When the degree of acculturation is high, services can often be delivered effectively by personnel

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[52] The Task Force has defined "multicultural" as follows: "'Multicultural' means being comfortable with and generally knowledgeable about the culture of the dominant Anglo-American culture of New Jersey and the culture and major subcultures of a linguistric minority at the minimum level of 'cultural' fluency ... defined by the Administrative Office of the Courts and being able to deliver effective, culturally fluent services to clients from both cultures." Proposed standard 1.1.15. For example, this means being able to work effectively with Puerto Ricans and Cubans as well as Hispanics from North, Central and South America. While there is a common cultural heritage, there are significant distinctions based upon national or regional characteristics.

who, while not necessarily multicultural themselves, are truly cosmopolitan, free of prejudice and ethnocentrism, and are aware of the effects of culture on service delivery and are competent at communicating interculturally.

(4) Access to forms and documents that can be understood.[53] When forms or documents are available only in English, many linguistic minorities cannot read or understand them. Accordingly, forms and other documents should routinely be available in the language of the client. This availability, of course, must be based on a substantial number of clients in the population who speak a given language. It is simply not feasible to publish a translated version of every court form in every language that will appear in the courts, so the access to forms and documents should be relative to the size of the target populations. When forms have not been translated into a client's language, the form should be translated into the client's language by a qualified legal translator (who may typically be the court interpreter who is assisting).

In addition, if forms are going to be translated into other languages, they should be drafted in easily translatable English as far as is possible. The rules of writing easily translatable English should be followed to permit the greatest facility for producing the translated version(s).[54]

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53 See the position on bilingual documents taken by the New Jersey Supreme Court in Alfonso v. Board of Review, 89 N.J. 41 (1982).

54 A helpful guide for writing translatable English is provided by R.W. Brislin, W.J. Lonner and R.M. Thorndike, CROSS-CULTURAL RESEARCH METHODS 32-58 (1973). The rules emphasize writing with simplicity, brevity, the active instead of the passive voice, avoidance of metaphors and colloquialisms, specificity, to name a few of the guidelines. The principles for drafting forms and other documents in translatable English are virtually identical to the principles of drafting in plain English. If

(5) Access to information about services. It is difficult to seek a service if one does not know that it is available. Linguistic minorities are often unfamiliar with public institutions and their services. Unless those institutions provide information through publicity, outreach or community education, many persons will remain ignorant of rights, benefits and services to which they are entitled.

Protecting Human Rights

The protection of human rights constitutes a fundamental concern. Its meaning is most clearly articulated by the Universal Declaration of Human Rights, Article 2 of which states,

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[55]

This right, according to the Declaration's preamble, is based in part on the philosophy that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Language, a dimension of human experience excluded from direct protection under civil rights laws in this

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all of an agency's forms are written in easily translatable English, then, there will likely be an additional benefit--forms that are more likely to be understood by persons who read English. See nn. 9-11, supra, and J. Redish, "How to Write Regulations (and Other Legal Documents) in Clear English," 1 LEGAL NOTES & VIEWPOINTS Q. 73 (Aug. 1981).

[55] United Nations, HUMAN RIGHTS--A COMPILATION OF INTERNATIONAL INSTRUMENTS OF THE UNITED NATIONS 1, Doc. ST/HR/1, U.N. Sales No. E.73.XIV.2 (1973; Declaration adopted 10 December 1948) (emphasis added).

country,[56] is a critical component of the identity of both individuals and of

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[56] For example, the New Jersey Constitution provides, "No person shall be denied the enjoyment of any civil or military right, not be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin." N.J. CONST. art. 1, para. 5 (emphasis added). This constitutional provision has been echoed in and extended by subsequent legislation to also proscribe discrimination because of age, sex, marital status, liability for service in the Armed Forces of the United States, or nationality. N.J.S.A. 10:5-3. The Task Force has found no precedent in New Jersey law that indicates whether discrimination on the basis of a person's language (e.g., a Spanish-speaking refugee from Cuba) is intended by these laws to be proscribed insofar as it may be included under ancestry, national origin or nationality.

However, at the Federal level, some executive agencies have explicitly provided that national origin discrimination prohibited under §601 of the Civil Rights Act of 1964, 42 U.S.C. §2000d, includes the linguistic dimension. The leading precedent is Lau v. Nichols, 414 U.S. 684 (1974). The Department of Health, Education and Welfare had issued guidelines which extended protection under "national origin" to "children deficient in English language skills." 35 Fed. Reg. 11,595 (Jul. 18, 1970). The Supreme Court held that the Department had "...authority to promulgate regulations prohibiting discrimination in federally assisted school systems" under §602 of the Civil Rights Act of 1964, 42 U.S.C. §200d-1. Lau, at 788-789. The opinion relied solely on the Civil Rights Act of 1964 and found no need to reach the argument advanced under the Equal Protection Clause of the Constitution. The Court did not hold that "national origin" should or must be extended to include discrimination on the basis of language, but that Federal executive agencies had the authority to issue guidelines that extended protections under "national origin" to include discrimination on a linguistic basis that can be associated with national origin.

The Equal Employment Opportunity Commission also expressly includes language as a feature of national origin. "The Commission defines national origin discrimination broadly as including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group." 29 C.F.R. §1606.1 (1983) (emphasis added). The EEOC policy provides further that employers may require employees to speak only English when justified by "a business necessity," but otherwise presumes that such a rule would violate Title VII of the Civil Rights Act of 1964. "Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in groups.[57] If persons are to be treated with dignity and respect, then, their languages must be viewed with respect and language-based discrimination violates a fundamental human right,[58] if not civil rights laws as well. As Judge Irving R. Kaufman wrote in the landmark case, United States ex rel. Negron v. State of New York:

> Not only for the sake of effective cross-examination, however, but as a matter of simple humaneness, Negron deserved more than to sit in total incomprehension as the trial proceeded. Particularly inappropriate in this nation where many languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores, whose life and freedom the state by its criminal processes chooses to put in jeopardy.[59]

Ensuring the Integrity of the Fact-Finding Processes

Trial judges are charged with the responsibility of preserving the integrity of the fact-finding process. This process consists primarily of taking

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a discriminatory working environment." 29 C.F.R. §1606.7 (1983). Some case law tends to agree with such a policy (e.g., Saucedo v. Brothers Well Service, Inc., 464 F.Supp. 919 (1979, S.D. Tex.) and some does not (e.g., Garcia v. Gloor, 609 F.2d 156 (1978, C.A.5 Tex.).

[57] E.B. Ryan, "Why Do Low-Prestige Language Varieties Persist?," in LANGUAGE AND SOCIAL PSYCHOLOGY (H. Giles and R.N. St Clair eds. 1979); D. M. Taylor, "Ethnicity and Language: A Social Psychological Persepective," in LANGUAGE: SOCIAL PSYCHOLOGICAL PERSPECTIVES 133 (H. Giles, W. P. Robinson and P.W. Smith eds. 1980). See also 20 B.R. 6-7 (May 1985).

[58] See the following for more detailed studies of these issues: A. Rannat, STUDY OF EQUALITY IN THE ADMINISTRATION OF JUSTICE, Doc. E/CN/sub.2/296/rev.1, U.N. Sales No. E.71.XIV.3 (1972); R.F. Macias, "Language Choice and Human Rights in the United States," in LANGUAGE IN PUBLIC LIFE 86 (J. E. Alatis and G.R. Tucker eds. 1979); and M.S. McDougal, H.D. Lasswell, and L. Chen, "Freedom from Discrimination in Choice of Language and International Human Rights," 1976 S. ILL. U. L. J. 151 (1976).

[59] Supra n. 38, at 390 (1970) (emphasis added).

evidence, confronting and cross-examining witnesses.[60] When the testimony of a witness is rendered through a court interpreter, only the English interpretation is preserved on the record. Hence the integrity of the fact-finding process depends on the competence of the court interpreter. This critical role that court interpreters play in the taking of evidence is underlined by the fact that they are subject to the provisions of the rules relating to witnesses.[61] Those rules require, among other things, that witnesses be sworn.[62]

It is also critical that evidence supplied by witnesses before a grand jury be taken through qualified court interpreters. Considerations of both due process and ensuring the integrity of the fact-finding process require this in order to prevent the returning of counts that are based on incorrect interpretations. It can also lead to indictments of perjury when testimony rendered at a later date gives the appearance of contradicting testimony given before the grand jury. It is clearly not in the interests of due process or reliable fact-finding that persons are indicted, let alone convicted, on the basis of statements they have not made.[63]

There are other kinds of fact-finding which should be considered in addition to evidence. For example, reports are written to inform judges' decisions (e.g., presentence reports, child custody reports, etc.). The facts and interpretations of facts reported in these documents must be accurate and complete, regardless of the linguistic or cultural barriers which may exist between the client and the investigator who writes the report. As the Supreme Court said of presentence reports in State v. Kunz, "Their worth, so long as they are accurate, is beyond question; if inaccurate their harm may be incalculable."[64] The Court then held, not as a constitutional requirement but as a matter of rudimentary fairness, that presentence reports should be given to defendants prior to sentencing in order to ensure the integrity of the process--i.e., to ensure that reports are accurate. Just as the integrity of taking testimony from witnesses depends on the competence of the court interpreter, the integrity of written reports depends in part on the linguistic and multicultural competence of the person who interviews clients and evaluates such information for judges.

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[60] See, for example, EVID. R. 4 and 6.

[61] EVID. R. 17.

[62] EVID. R. 18. Other standards which may be derived from the rules which apply to interpreters are identified and discussed in 5 B.R. 7-9 (Jun. 1983).

[63] For an example, see the case of Takeru Kamiyama, an aide of Sun Myung Moon. U.S. v. Moon, 718 F.2d 1210,1238-1241 (2d cir. 1983).

Promoting Efficient and Uniform Administration of Justice

The New Jersey Judiciary is making strides to administer its resources more efficiently and assure that services are uniformly available. One of the factors that affects efficiency is the coordination of interpreting services and there are three dimensions of efficiency which the Task Force singles out as being significant. To the degree that these issues are not addressed, the Judiciary is incurring unnecessary costs which are inconsistent with recent strides forward in efficient case processing.

1. Movement of cases. This includes the following kinds of actions: interruptions during a proceeding, delays of proceedings, confusion created by

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[64] 55 N.J. 128,132 (1969) (emphasis added).

bad interpreting that takes time to iron out, postponements, and the like. This is especially problematic when interpreters are not readily available.

2. Significant errors during proceedings. Such errors can result in mistrials or appeals.

3. Use of staff and free-lance interpreters. The issue here is the inefficient use of interpreters. Examples include interpreters who are called to a courtroom but wait for varying periods of time before the case for which they have been called is heard and the failure to have cases which need an interpreter follow each other (requiring multiple trips to the same courtroom), etc. This may also result in considerable amounts of down-time for full-time personnel, an unfortunate loss of scarce resources. This is often a result of a lack of appropriate coordination and efficient court calendaring.

With respect to uniformity, considerations of equal protection imply that services in the courts should be available uniformly unless there is a rational basis for the differences.[65] It is also a principle of good administrative practice that services delivered in different offices should approximate each other in terms of availability.[66] A truly unified court system will make its services relatively accessible in all courts as long as there is no justifiction for differential availability of such services.

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[65] "[W]ithin a state-administered system, such discrepancies [diversity in the pretrial intervention programs] may no longer be tolerated, absent a rational basis for such distinctions." State v. Leonardis, 71 N.J. 85, 120-121 (1976). The Supreme Court went on to direct that P.T.I. programs be implemented statewide according to uniform guidelines. Id. at 121.

[66] One of the most recent examples of the Judiciary's attempt to ensure uniform delivery of services is the establishment of community service programs in all twenty-one counties. This was the intention of the Legislature (Joint Legislative Appropriations Committee Resolution #233 for FY 1983) and the Administrative Director of the Courts (Memorandum to the Assignment Judges [June 4, 1982]). In addition, the Administrative Director of the Courts has approved standards that regulate these pro-

Two features of uniformity are important. The Task Force was concerned to discover the degree to which court interpreting, legal translating, bilingual and bilingual/bicultural support services are uniformly available and uniformly delivered.

Promoting Public Confidence in the Judiciary

It is critical that the public be confident in the administration of justice and the Judiciary has taken several steps to promote the public's confidence. For example, its employees are expected to deliver services in a manner that will inspire such confidence, as the following standard from the code of ethics for New Jersey's Probation Officers illustrates:

> As public employees, probation officers and other persons employed in the probation department have an obligation to treat clients and other visitors to their offices in a civil, dignified and courteous manner, and to perform their services in a way that will inspire the public's confidence and trust.[67]

Public confidence in the Judiciary includes the confidence of both (1) persons who have direct contact with the court as parties, witnesses or jurrors, and (2) the general public whose source of information is secondhand. One of the factors which surely affects the general public's confidence

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grams and seek to ensure uniform administration and availability of services. STANDARDS FOR COMMUNITY SERVICE PROGRAMS IN NEW JERSEY (January 1985).

[67] PROBATION PRACTICES MANUAL §1103.1 (11) (1973).

is the experience of people in the courts. The following passage from a classic study of the experiences of immigrants in the nation's courts shows how interdependent the formation of confidence is for all people, regardless of the source of information upon which they base their opinion.

> The immigrant who is charged with committing an offense against the law is brought before some court, whether he knows that there is such an institution or not, whether he knows or does not know by what means he is brought there or what law he is accused of violating; the immigrant who has had some wrong done to him, which the law would take cognizance of, may not find his way to the court at all, unless some one will take him in hand and see that he gets there. He may not know his rights under the law, he may not know where to go to get redress or protection, or what methods he must follow to avail himself of legal remedies....
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> And when the immigrant does finally stand before the court, either as complainant or defendant, he needs, even more than the native born, some technical advice and aid of the sort given by an attorney. It is of great importance to him, then, that such helpers should be available, and of as great importance not only to himself, but to the community, is the kind of service they render.
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> For these helpers are the principal media through which the immigrant gets his first impressions of American justice, his first information about our courts and our laws. With every social contact in this country the immigrant is building up a trust or a distrust in our institutions, a respect or disrespect for them, unsuspected by the general public, for the immigrant is as much shut off from its view as it is from his.[68]

The author of these remarks went on to give example after example of abuses of immigrants in the courts of 1922. While the nature and extent of such abuses have surely declined since 1922, linguistic minorities still tend to be distrustful of the courts and some of the abuses still occur. At least two studies on sentencing have found that Hispanics are punished more than others for similar offenses,[69] a finding that will hardly inspire trust of the courts by Hispanics--and perhaps other linguistic minorities as well.[70]

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[68] K.H. Claghorn, THE IMMIGRANT'S DAY IN COURT 121-122 (1923) (emphasis added).

The Judiciary's image is projected through its personnel. The likelihood that linguistic minorities will come to view the legal system and the Judiciary in a positive light is largely dependent upon the professionalism and sensitivity with which their needs are served by employees of the courts. If linguistic minorities feel that they are foreclosed from access to the legal system, then public confidence in the Judiciary is lost for a significant proportion of the state's population. On the other hand, efforts to foster the confidence of linguistic minorities in the integrity of the judicial system will inspire confidence that this truly is a system of justice for all.

Professional Responsibility

The first part of this section begins by identifying the types of services required for ensuring communication sufficient to protect constitutional and human rights, ensure the integrity of the fact-finding processes, promote efficiency in the administration of justice, and enhance public confidence in the Judiciary. It then establishes the essential distinctions between the respective services and summarizes the qualifications that are required if these services are going to be delivered at acceptable levels of proficiency. The second part of this section establishes the ethical standards essential for the various services.

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[69] P.L. Sissons, THE HISPANIC EXPERIENCE OF CRIMINAL JUSTICE (1979); J. Petersilia, RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM (1983).

[70] Two other major documents have been published since 1922. First, the United States Commission on Civil Rights reported in 1970, "The attitude of Mexican Americans toward the institutions responsible for the administration of justice--the police, the courts, and related agencies--is distrustful, fearful, and hostile." MEXICAN AMERICANS AND THE ADMINISTRATION OF JUSTICE IN THE SOUTHWEST 87 (1970). Twelve years later the National Minority Advisory Council on Criminal Justice reported, "The dominant attitude of minorities testifying at Council hearings was their sense of frustration regarding the courts, the legal procedures, and practices." THE INEQUALITY OF JUSTICE: A REPORT ON CRIME AND THE ADMINISTRATION OF JUSTICE IN THE MINORITY COMMUNITY 255 (1982).

Types of Personnel Required

The types of personnel required for helping to bridge the communication barriers that have been identified are court interpreters, legal translators and bilingual court support personnel (which may be subdivided into direct service personnel and public contact personnel[71]). The four types of personnel share some requirements.[72] First, all must be bilingual in English and the client's language. Second, all must be fluent as well in both cultures represented in a given interaction and be able to recognize and use appropriately the culturally shaped paralinguistic features of communication and to cope effectively with additional barriers to effective communication such as stereotypes, ethnocentrism and prejudice. They must also understand differences between regional variations of both languages and cultures, such as the great diversity of dialects and subcultures represented by Hispanics from different countries.[73] In sum, these personnel must be capable of communicating effectively in two or more linguistic/cultural traditions and the variations within them.

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[71] The distinction between the two groups of court support personnel was inspired by California's Dymally-Alatorre Bilingual Services Act. CAL. GOV'T. CODE §7297. Direct service positions are usually positions characterized as paraprofessional or professional because of the skills required to (a) gather information through interviews, (b) analyze and interpret information about clients, (c) make recommendations to judges, (d) intervene directly in clients' lives, or (e) otherwise exercise judgement in a context where the rapid acquisition of a client's trust is critical for the service to be delivered successfully.

Public contact positions, on the other hand, are positions such as receptionists, telephone operators, court attendants and some clerical personnel which have contact with the public but do not require extensive skills such as those required for direct service positions.

[72] Note that while persons who fill the four different types of positions must present the requirements discussed in this paragraph, the degree of proficiency at which they must be able to perform individual requirements ranges dramatically from one type of position to another. The relative degrees of proficiency are discussed in detail in the next two sections.

Court Interpreters and Legal Translators

Generally speaking, linguistic considerations are primary for court interpreters and legal translators since their fundamental role is that of media to facilitate communication between languages. While sensitivity to cultural variables is also significant here, professional competence derived from sophisticated linguistic skills is of paramount importance for the efficacious delivery of these services.

It is critical to begin by correcting a widespread misperception about interpreting and translating. Many otherwise knowledgeable individuals mistakenly believe that interpreters and translators necessarily subject messages they transfer from the source language to the target language to some sort of filtering, transformation or explanation which distorts or changes the original meaning.[74] This perception is reflected well by the Italian proverb,

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[73] 20 B.R. 20-23,39 (May 1985) and 14 B.R. 34-35,39-41 (May 1984).

[74] See 9 B.R. 1-2 (Dec. 1983) for a discussion of such perceptions held by some of the state's judges.

"Traduttori, traditori," which, translated literally, means, "Translators, traitors." Obviously this is a perception with a long history and with many examples. On the positive side, it recognizes the importance of accuracy and completeness when communicating, as well as the degree to which two parties rely on such mediators of communication. Certainly much can be and often is "lost in the translation."

On the negative side, however, this perception does not recognize that interpreting and translating can transfer messages across languages effectively. It can result in expectations that attempts to communicate across language barriers are doomed to fail, are necessarily suspect, or otherwise are to be avoided if at all possible. However, the sine qua non of interpreting and translating is precision, accuracy and completeness. Messages in the source language must be and can be conveyed verbatim in the target language, and qualified interpreters and translators do exactly that.[75] While court interpreting and legal translating have too often been performed by persons who are unqualified for such tasks, people can be trained to perform these services in a way that inspires confidence, trust and reliance.

Interpreting and translating should be distinguished since many people mistakenly label an interpreter as "the translator" or use the two words interchangeably. Certainly much knowledge and many skills and sensitivities are shared by the two professions,[76] but they should be distinguished. The following classic statement of an internationally recognized authority on interpreting and translating makes the fundamental distinctions:

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[75] Certainly some phrases or words have no equivalents in the target language. The court interpreter must report the fact that the respective languages do not share a semantic field for such a word or phrase. This results in footnotes in translated texts or, in court, the interpreter's bringing the matter to the judge's attention.

> Translation converts a written text into another written text, while interpretation converts an oral message into another oral message. This difference is crucial. In translation, the thought which is studied, analyzed and subsequently rendered in the other language is contained in a permanent setting: the written text. Good or bad, this text is static, immutable in its form and fixed in time. And the translation, equally circumscribed within a written text, is intended, as was the original, for a public the translator does not know. ... interpreting represents something entirely different. The ... interpreter is there with both speaker and listener, dealing with messages whose fleeting words are important, not because of their form, but almost entirely because of their meaning. He participates in a dialogue, his words are aimed at a listener whom he addresses directly and in whom he seeks to elicit a reaction, and he does this at a speed which is about 30 times greater than that of the translator.[77]

The difference between the jobs of interpreters and translators causes many differences in the way the two work. There are three different modes of interpreting: simultaneous, consecutive and summary. These modes, which help to distinguish the ways in which interpretation is carried out over time, are meaningless for the translator. Because translators work with written modes of communication, their command of language at any given time need not be as immediate as that of the interpreter. The translator can edit, make revisions, and refine the translation any number of times. There are also mechanical devices such as computer and word processors which can expedite the work of the translator.

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[76] See 21 B.R. 5-11 (Jan. 1984) for a discussion of the distinctions between the two professions.

[77] D. Seleskovitch, INTERPRETING FOR INTERNATIONAL CONFERENCES 2 (S. Dailey and E.N. McMillan trans. 1978).

The interpreter renders an interpretation almost instantaneously when interpreting in the simultaneous mode. Even when the interpreter is working consecutively, the rendering must be delivered as soon as the oration to be interpreted is completed. There is very little time to think through the choices which must be made in order to effectuate the transfer of a message from one language into another. At the very moment when this transfer is being performed, the interpreter must have full command of the vocabulary in the source and target languages since there is no time to consult a dictionary or confer with a colleague.[78] An interpreter, then, is never in a position to revise the completed work. The translator, by contrast, has time to cut a draft, review and edit the draft, consult dictionaries or colleagues, and may acquire special vocabulary in the process.

In addition to temporal and rapidity-of-recall considerations, interpreting can be distinguished from translating on linguistic grounds. For example, spoken English contains 45 linguistic variables while there are only 26 such variables in written English.[79] Assuming most if not all languages present such a distinction between written and oral modes, it seems clear that the interpreter must deal with a far greater number of linguistic variables than the translator.

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[78] The sophisticated intellectual skills which a person must possess to interpret well in the simultaneous mode have been most lucidly described as follows: "Behaviourally, this represents a complex form of activity, seemingly involving very rapid decoding and encoding operations. An uncritical appraisal of the process suggests that at any moment in time the interpreter or translator (T) may be engaged in the following activities, either simultaneously or in very rapid succession: (a) listening to what is being said by the speaker (S), i.e., message reception; (b) understanding its meaning, i.e., message decoding; (c) converting the message into the target language, i.e., encoding; (d) delivering the translated version, i.e., emitting; all the while having to store for subsequent processing the continuation of the message as it is being delivered by the S. All this, furthermore, must be done in real time, since the T must reasonably keep pace with the S in delivering the translated version." H.C. Barik, "Simultaneous Interpretation: Temporal and Quantitative Data," 16 LANGUAGE AND SPEECH 237,237-238 (1973).

Of all four categories of court personnel, it is the interpreter whose linguistic skills must be the most developed. It is not enough merely to be bilingual. Rather, a court interpreter must be able to speak both English and the second language at a certain level of proficiency.[80] Even so, being bilingual is only the starting point. The skills of the professional court interpreter involve much more than a simple process of providing semantic equivalence. A court interpreter must be aware of lexical, grammatical and syntactic differences between the source language and the target language since different languages often code information and thought processes in different ways. Dialect, educational level, register, geographic variation, specialized terminology, untranslatable words or phrases and style are all integral components in the choice of expression. Familiarity with a broad range of subject areas and a myriad of general vocabulary words in both languages is essential.

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[79] Hall, supra n. 25, at 139.

[80] When the Federal Court Interpreters Act was being implemented by the Administrative Office of the United States Courts, a job audit of existing interpreters found that "many interpreters simply do not have the command of the language, either Spanish or English, to know what is being said in the courtroom. Not knowing English they couldn't get it across in Spanish." Seltzer, supra n. 4, at 603. Judge Pollack cor-

A court interpreter must furthermore demonstrate a level of linguistic competence sufficiently advanced to render the often subtle utterances of speakers at the same level of language in the target language. In view of the nature of legal language as has been reported above, the court interpreter must have mastered the characteristics and peculiarities of legal language, the legal process, and the vocabulary of the specific subject areas covered in each case. Since the level of language in the courtroom has been linguistically documented at the level of persons who have completed a minimum of two years of college, the court interpreter must also have mastered the range of vocabulary and general knowledge representative of such persons.

Court interpreters also need to be familiar with the legal systems of the countries whose languages are being interpreted and must be continually alert to differences in thought patterns which are a result of dissimilar legal systems. In many cases, this means both the civil law legal system of a foreign country and the common law legal system of the United States. Since many concepts do not exist in the same form in both systems, literal interpretation of many legal or judicial concepts in the Anglo-American legal system is meaningless to someone from a legal code based in civil law.[81]

In addition, a competent interpreter must be aware of and able to apply actively such interpreting techniques as hand signals for pauses, use of the

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rectly concluded that it simply does not follow that just because a person is bilingual, the person can interpret.

[81] For example, the function of a notary public in the United States is limited to such routine matters as authentication of signatures. However, in Spain and Latin America, the notario público is an attorney who additionally meets rigorous qualifications approaching those of a judge and who is charged with the legalization of many acts and contracts.

first person while interpreting and use of the interpreting mode appropriate for different situations. She or he must be able to transmit lengthy statements from the source language to the target language verbatim[82] in both simultaneous and consecutive modes.

The legal translator must apply the same level of sophistication with which the court interpreter conveys oral messages. The legal translator must demonstrate a thorough knowledge of the subject of the document, a familiarity with similar model texts in the target language, and a sensitivity to subtle contextual changes. As with the court interpreter, the legal translator must have an excellent understanding and command of the general vocabulary, grammar, and syntax of both the source and the target languages, as well as the legal terminology, the vocabulary of the subject area of the document, the legal systems involved, and the levels and registers of both languages.[83]

One inherent difficulty in the translation process is that the technique of language transfer must, of necessity, emphasize either the precision of the source language or maximal adaptation of the original text to the target language. Emphasis on the source language results in a more objective but less fluid rendering, stressing the preservation of all semantic and syntactic elements of the original. Emphasis upon the target language stresses the communication of all linguistic and contextual levels into the target language. Given the significance attached to the preservation of meaning in the legal field, at first blush legal translating and interpreting would appear to fall squarely into the approach which emphasizes the source language. Yet, the resulting text or interpretation might be incomprehensible if the cultural and linguistic norms of the target language are not taken into account.[84]

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[82] "Verbatim" refers to an accurate, concept-by-concept (not word-for-word or literal) rendering of an utterance from the source language to the target language.

[83] 21 B.R. 6 (Jan. 1984). The legal translator must understand the characteristics and peculiarities of the language of the law. For example, "measure" refers to a proposed law in legal language, whereas in everyday language, a "measure" is a term used for quantifying a specific amount.

There is one situation where legal translation and court interpretation are intertwined. Sometimes the court interpreter is required to perform sight translations. Here the court interpreter must bring to bear the requisite knowledge of the written word which characterizes the work of the legal translator, but must carry out the translation with the same rapidity of response which is required of court interpretation.

Bilingual Court Support Personnel

Bilingual court support personnel are distinguished from court interpreters and legal translators in three primary respects. First, court support personnel interact actively with clients as primary agents, supplying information, establishing professional relationships, and delivering a wide range of direct services in English and a second language. They use their language skills to convey their own messages directly to persons whose comprehension of English is limited. Their role in communication is, therefore, an active role, not the unobtrusive, passive, mediating role of the court interpreter or legal translator.

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[84] Ibid.

Bilingual court support personnel also differ from court interpreters and legal translators insofar as the linguistic skills required for performing their duties are lesser. Court interpreters and legal translators are, by definition, language specialists with extensive lexical and terminological expertise and technical skills appropriate to those professions. Linguistic skills are primary for court interpreters and legal translators since their fundamental role is that of a medium to facilitate communication across languages. Bilingual court support personnel may also have such skills, but that is incidental to their positions since support staff, by definition, are specialists in delivering a certain service, even though they must be able to do so bilingually.[85]

It is critical that the skills of the language specialists not be confused with the skills of the bilingual support personnel. Unless bilingual court support personnel also meet the same professional requisites of the language specialists, they should not be used as court interpreters or legal translators.[86]

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[85] The Department of Civil Service, when testing applicants for a bilingual position, first examines applicants to determine their ability to perform the duties of the title to which they seek appointment. Only once they have passed the examination for the main title are they tested for their bilingual skills. Hence, persons seeking to become a Probation Officer --Bilingual (Spanish-English) must first pass Civil Service's examination for Probation Officer and, second, pass an examination of their proficiency in Spanish and English. 3 B.R. 3-6 (Dec. 1982).

[86] For example, unless a Probation Officer--Bilingual (Spanish-English) is also a language specialist, he or she is not expected to keep abreast of new legal, scientific or medical terminology. In order to function successfully, the bilingual court support employee does not need to possess a highly technical command of the target and source languages.

The last major distinction between the language specialists and court support personnel is that while both must be familiar with the cultures and subcultures they serve, the application of cultural expertise in the two services varies. For example, it is expected that a Spanish-English interpreter has sufficient familiarity with a broad cultural base so as to be able to interpret for Americans, Britons or Australians, on the one hand, and for Spaniards, Cubans, Mexicans or Puerto Ricans on the other hand.[87] However, the interactions of court interpreters with persons in the courtroom are almost exclusively linguistic and the function of cultural fluency[88] is passive. By comparison, the counselor in a Crisis Intervention Unit must be able not only to communicate in a client's or family's language, she or he must also be able to develop rapport, deliver services, and make recommendations to the court in ways which are culturally appropriate.[89] Communication with such clients is also more significantly reliant upon the paralinguistic

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87 Persons who speak two languages are called "bilingual" and the Task Force proposes that persons presenting the corresponding knowledge of two cultures and their respective subcultures be called "multicultural" instead of the more commonly used term, "bicultural."

88 Awareness of and ability to use effectively cultural dimensions affecting the cross-cultural delivery of services and intercultural communication is variously referred to as cultural fluency, cultural awareness and cultural sensitivity. See B. Valera-Schutz and M. Gonzalez, "Cultural Fluency," in SKILLS FOR BILINGUAL LEGAL PERSONNEL 1-64 (M. R. Frankenthaler ed. 1982) for an extensive discussion of the importance for being culturally fluent in delivering legal services.

89 Note, for example, the following standard in the American Bar Association's STANDARDS RELATING TO ABUSE AND NEGLECT (1977):

"1.4 Protecting cultural differences
Standards for coercive intervention should take into account cultural differences in childrearing. All decisionmakers should examine the child's needs in light of the child's cultural background and values." At 44.

features of communication, whereas court interpreters do not "interpret" paralinguistic features and legal translators never see them at all.

The distinctions between the two types of court support personnel should be noted. The linguistic and cultural skills required of persons in public contact positions are substantially less than the linguistic and cultural skills of persons in direct service positions. Persons in public contact positions must be able to answer questions, give directions and generally be hospitable to the consumers with whom they interact in English or a given second language. This level of communication and linguistic expertise requires no more than fundamental conversational abilities.[90] Since these employees are often the first people clients contact when they approach the courts, they play an important role in being sensitive to the needs of the public. Accordingly, the cultural expertise they need to have includes welcoming and greeting people in culturally appropriate ways, giving information in culturally sensitive styles, and providing directions in a respectful and tolerant manner. These are the most elementary forms of cultural fluency.

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[90] For example, the language tests administered by the Department of Civil Service to determine whether candidates for bilingual positions are bilingual at acceptable minimum levels of proficiency evaluate candidates at three levels. The lowest level assumes a working proficiency and applies primarily to clerical titles (which may include most people in what the Task Force calls "public contact positions"). Applicants for Probation Officer--Bilingual (Spanish-English) must demonstrate proficiency at the middle level, while court interpreters and psychologists must be proficient at the highest level. 3 B.B. 6-8 (Dec. 1982).

Persons involved in the cross-cultural delivery of direct services, however, must be the most culturally fluent of all support personnel.[91] The reason this is so has been published for over sixty years.

> "[W]e can certainly ask that the probation officer who is to deal with the foreign born be definitely tested in knowledge of foreign-born peoples, since he has to come into long and intimate contact with his clients and carry on with them a distinctly educative process. It would be desirable, but we probably could not require, in all cases, that he should understand the language of his probationers."[92]

Hence the effectiveness of these services is largely dependent upon the ability of staff to apply their professional skills in ways that are appropriate to the cultural groups they serve. This obviously includes sufficient mastery of the languages and familiarity with the paralinguistic and psychocultural dimensions of communication so as (1) to create and maintain rapport, acceptance and credibility, (2) to make accurate diagnoses of needs, (3) and to use helping and enabling strategies that draw upon appropriate supporting networks,[93] building upon the strengths inherent in the culture of the client.[94]

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[91] "[T]oday, 'Multicultural Person' is as important--if not more important--than 'Mulitilingual Person'. People need to be able to communicate effectively with those of other cultures. Individuals working (and living) in different countries must become more culturally sensitive and cosmopolitan than ever before. Apart from the obvious need for people involved in international operations, an increasing number face cross-cultural problems at home where two, three or even more different cultural groups can be represented in a workforce." T.J. Attwood, "Foreward," HELPING ACROSS CULTURES 1,1 (G.L. Lippitt and D.S. Hoopes eds. 1978).

[92] K. H. Claghorn, *supra* n. 68, at 243. The principle has been stated more recently by Joint Commission on Correctional Manpower and Training. "Since communication is essential to any human interaction, particularly for any problem-solving process, correctional workers need to know something of the language of the ethnic groups from which come the offenders in their charge. It is all too common for people to interpret negatively what they do not understand. This works both ways: the offender may fail to cooperate in a rehabilitation program because he does not understand what is said, and the supervisor may conclude that he is merely stupid or hostile." DIFFERENCES THAT MAKE THE DIFFERENCE 43 (R.K. McNickle ed. 1967).

This widely recognized principle of service delivery has been studied scientifically on a limited basis, but the evidence adduced to date shows that Mexican-American probationers who are supervised by bilingual/bicultural personnel recidivate at lower rates than Mexican-American probationers who are supervised by the average officer who is neither bicultural nor bilingual.[95]

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[93] See 20 B.R. 77-102 (May 1985) for an extensive discussion of the competencies required of persons who are to deliver services cross-culturally.

[94] A counselor with extensive cross-cultural counseling experience gives an excellent example of the problem in the following words: "Most of us who work with Puerto Ricans probably are somewhat guilty of trying to help them become more like us. We tend to focus most on shortcomings. In other words, help for the Puerto Rican is too often visualized, at least unconsciously, from the frame of reference of the Anglo ways of doing things. This ignores the fact that the Puerto Rican society has functioned effectively for generations. We need to help them with problems they identify and for which they seek aid rather than what we assume are their problems." E.W. Christensen, "When Counseling Puerto Ricans...," 55 THE PERSONNEL AND GUIDANCE J. 412,412 (1977).

[95] See especially, Utah Law Enforcement Planning Agency, THE MEXICAN-AMERICAN COMMUNITY CORRECTIONS SUPPORT PROGRAM: A DESCRIPTION OF SERVICES PROVIDED AND ASSESSMENT OF EFFECTS ON RECIDIVISM DURING ITS SECOND YEAR (October 1, 1974-October 30, 1975) (1975) and Yolo County Probation Department, YOLO COUNTY (CALIFORNIA) MINORITY PROBATION AIDES: AN EVALUATION OF THE MEXICAN AMERICAN PROBATION CASE AIDE PROJECT (1971-1973) (1974). See also The Commission for Racial Equality and the West Midlands County Probation and After-Care Service report, PROBATION AND AFTER-CARE IN A MULTI-RACIAL SOCIETY (1981), for an analysis of related issues in Britain.

Similar success has been found in some inpatient psychiatric[96] and outpatient mental health treatment programs.[97]

In addition to the support for this philosophy of service delivery articulated by the literature and the aforementioned research projects, the bilingual probation and court support personnel surveyed by the Task Force advocated this position. When asked how well Probation Officers should know Hispanic culture in order to deliver effective servies to Hispanic clients, 27% responded "Completely," 53% answered "Generally," and only 19% indicated "Some," "Little," and "None" combined.[98] It was also recommended by the Supreme Court Committee on Pretrial Intervention.[99]

Ethical Considerations

Adherence to high ethical standards is essential for delivering any professional service. However, there is one that is shared by most professions--it is unethical for persons to attempt to deliver a service for which they are unqualified. The American Translators Association requires every translator "To accept no assignment for which he knows himself to be less than well qualified in either language or understanding of the subject, except with the prior knowledge of his client or employer...."[100] Members of the Court Interpreters and Translators Association are similarly bound:

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[96] I. Cuellar, L.C. Harris and N. Naron, "Evaluation of a Bilingual Bicultural Treatment Program for Mexican-American Psychiatric Inpatients," in EXPLORATIONS IN CHICANO PSYCHOLOGY 165 (A. Baron ed. 1981).

[97] A.E. Herrera and V.C. Sanchez, "Behaviorally Oriented Group Therapy: A Successful Application in the Treatment of Low Income Spanish-Speaking Clients," in PSYCHOTHERAPY WITH THE SPANISH-SPEAKING: ISSUES IN RESEARCH AND SERVICE DELIVERY 73 (M.R. Miranda ed. 1976). For a recommended model of delivering mental health services to Hispanics, see V. Abad, J. Ramos and E. Boyce, "A Model for Delivery of Mental Health Services to Spanish-Speaking Minorities," 44 AMER. J. OF ORTHOPSYCHIATRY 584 (July 1974).

[98] 16 *B.B.* 23 (Apr. 1985).

[99] *"Program staff should comprise significant numbers of men and women who live or have lived in the community from which participants are drawn, and who themselves represent cultural, racial, ethnic and linguistic groups in reasonable proportion to the participant population.* REPORT 38 (emphasis in the original; Jun. 19, 1981).

> An interpreter should only provide his professional services in a matter in which he is confident of his capacity to perform accurately. He should feel no compunction about withdrawing from a case in which he feels he will be unable to function effectively, due to lack of proficiency, preparation, or difficulty in understanding a witness or defendant.[101]

Shorthand reporters are bound by the same ethical constraints:

> The shorthand reporter shall strive to accept only those assignments where his levels of knowledge, skill, and competency are such that they will result in the preparation of a complete and accurate transcript and shall, whenever possible, remove himself from an assignment where he believes his knowledge, skill, and competency to be inadequate.[102]

Most other court support employees are not presently bound by this principle. However, it is fully binding upon psychologists and, perhaps implicitly,

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[10] "Code of Ethical Practices and Professional Rights," cited in TRANSLATION & TRANSLATORS: AN INTERNATIONAL DIRECTORY AND GUIDE 44-45 (S. Congrat-Butlar ed. 1979).

[11] PROFESSIONAL CODE FOR COURT INTERPRETERS §I.D (1982). The CODE OF ETHICS for the Registry of Interpreters for the Deaf, Inc., provides, "Interpreter/transliterators shall only accept assignments for which they are qualified." (1979)

[12] National Shorthand Reporters Association, CODE OF PROFESSIONAL RESPONSIBILITY §4 (1979).

upon Probation Officers. Principle 2 of the American Psychological Association's Ethical Principles of Psychologists provides:

> The maintenance of high standards of competence is a responsibility shared by all psychologists in the interest of the public and the profession as a whole. Psychologists recognize the boundaries of their competence and the limitations of their techniques. They only provide services and only use techniques for which they are qualified by training and experience....[103]

Ethical Issues Shared by Court Interpreters and Legal Translators

Court interpreters and legal translators who are serving in New Jersey are not yet bound by codes of ethics promulgated by the Judiciary as are attorneys and other judicial employees. In the absence of mandatory, court-imposed ethical and professional rules for court interpreters and legal translators, professional organizations promulgate such standards for their members. For example, the Court Interpreters and Translators Association has promulgated a

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[103] 36 AM. PSYCHOLOGIST 633,634 (1981). The discussion of this principle provides further, "Psychologists recognize differences among people, such as those that may be associated with age, sex, socioeconomic, and *ethnic backgrounds*. When necessary, they obtain training, experience, or counsel to assure competent service or research relating so such persons." *Id*. (emphasis added) This provision may have been implemented upon consideration of a recommendation that was made to the APA in 1973, namely, "'counseling of persons of culturally diverse backgrounds by persons who are not trained or competent to work with such groups should be regarded as unethical....'" D.R. Atkinson, G. Morten and D.W. Sue, COUNSELING AMERICAN MINORITIES: A CROSS-CULTURAL PERSPECTIVE 211 (1979).

The New Jersey code of ethics for Probation Officers has a provision which indirectly affirms this principle: "The conduct of all *probation* personnel should be free from impropriety or the appearance of impropriety, and they shall perform their duties without prejudice or discrimination against any person because of special interests, race, creed, color, religion or national origin." PROBATION PRACTICES MANUAL §1103.1 (10) (1975).

Professional Code which emphasizes issues such as accuracy, confidentiality, impartiality and proficiency.[104]

As in the case of members of other highly skilled and trained professions, the requirement of confidentiality or non-disclosure extends to court interpreters and legal translators. As a party who must be present in order to make communication possible, the court interpreter has the obligation of keeping confidential all matters interpreted except for information which is part of the public record. Furthermore, a court interpreter should at no time express to anyone a personal opinion regarding any legal matter in which he or she has rendered or is rendering interpretive services. The legal translator, in maintaining professional discretion, must divulge nothing which has been learned while serving in this professional capacity. Further, the legal translator works with many documents that contain personal information of a sensitive nature. It is vital that such documents be kept under lock and key and cared for in an orderly manner. This will avoid the unintentional violation of confidentiality which may occur, through carelessness, if photocopies or originals fall into the hands of third parties.

Ethical Issues for Court Interpreters

Many ethical problems are a result of a lack of consciousness of ethical issues and professional practices on the part of bilingual employees who are not trained linguists but who are cast in the role of court interpreter. Such

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[104] Supra, n. 101. In the area of professional practice, the code deals with such issues as mode of interpreting, interpreting mixed-language responses, and use of the first person in interpreting. Many other professional associations of interpreters and translators have promulgated codes of ethics.

"interpreters" may take improper initiatives such as volunteering information above and beyond the matters interpreted in a misguided desire to assist non-English-speaking witnesses or defendants to understand the proceedings better. The "interpreter" may "simplify," "explain," or "add to" communications, even to the degree of prompting witnesses. Thus adherence to high ethical standards goes hand in hand with professional training and practices.

One of the most difficult problems with which a court interpreter must deal involves the interpreter's professional relationship with the non-English-proficient person in need of language assistance. Because both of them speak the same language and probably share at least a similar culture, an intangible bond may grow between them. The court interpreter may feel empathy, pity, frustration. Conversely, the non-English-proficient individual, speaking his or her native language, may disclose certain pieces of information or make certain remarks, not realizing that it is the court interpreter's duty to disclose and interpret everything said by the non-English speaker.

The court interpreter should at no time offer or give any legal advice to the non-English proficient individual. It is the court interpreter's duty to maintain an objective, detached relationship, avoidng personal displays of emotion, subjective involvement, or social conversation.

A conflict of interest may exist for the court iterpreter in some situations. If the court interpreter was previously acquainted with or is a relative of any party or witness involved in the case or if the court interpreter has a personal interest of any kind in the outcome of the proceedings, there is a conflict.

The appearance of bias or lack of objectivity on the part of the court interpreter, just as actual bias or lack of objectivity, are inconsistent with the neutral role of the interpreter. If, for example, the interpreter wears the uniform of a Sheriff's officer when serving during a criminal matter, there is an unnecessary appearance of lack of objectivity.

An equally serious problem arises when the court interpreter encounters unfamiliar dialectal or technical vocabulary. If a court interpreter does not understand or cannot render a precise equivalent for a term or expression, it is the interpreter's ethical duty to so inform the presiding judicial officer. In many proceedings, the court interpreter is the only bilingual person present. Thus many errors might go undetected if the court interpreter did not call attention to the problem.

Ethical Issues for Staff in Court Support Services

The only remaining ethical issue is applicable not only to bilingual court support personnel but to all court support personnel. The issue is cultural bias in the delivery of services.[105] The roots of this ethical problem are the presumption of cultural superiority[106] and policies and practices which attempt to ensure the assimilation of minority cultures to the dominant culture. This disposition fails to recognize that all cultures and subcultures are valid.[107]

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[105] "The question of how to provide increased attention to cross-cultural counseling is not only an ethical one--how to eliminate cultural bias in counseling--but also professional--how to deliver mental health services to a culturally diverse population appropriately and effectively." P.B. Pedersen, "The Cultural Inclusiveness of Counseling," COUNSELING ACROSS CULTURES 22,48 (P.B. Pedersen, J.G. Draguns, W.J. Lonner and J.E. Trimble eds. 1981). See also N.D. Sundberg, "Research and Research Hypotheses about Effectiveness in Intercultural Counseling," COUNSELING ACROSS CULTURES 304,332 (P.B. Pedersen, J.G. Draguns, W.J. Lonner and J.E. Trimble eds. 1981), who relying on an essay by W.N. Wigginbotham and J. Tanaka-Matsumi, observed, "[I]t is unethical to introduce treatment methods which violate the cultural base of clients."

[106] See the discussion supra at pp. 34-35 and at n. 36.

The literature on the cross-cultural delivery of human services refers to this phenomenon as the "cultural encapsulation" of the professional. This means that professionals "assume that their own approach and associated techniques can be culturally generalized and are robust enough to cope with cultural variations." However, much of what professionals offer has been "designed by and for White, middle-class individuals."[108] The notion of cultural encapsulation also implies that many services[109] and approaches to service delivery[110] are culturally bound.

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[107] R. Wright, D. Saleebey, T.D. Watts and P.J. Lecca, TRANSCULTURAL PERSPECTIVES IN THE HUMAN SERVICES: ORGANIZATIONAL ISSUES AND TRENDS 3-9 (1983). See also Comment, "Cultural Pluralism," 13 HARV. C.R.-C.L. REV. 133 (1978).

[108] Atkinson, Morten and Sue, supra n. 103, at 13.

[109] D.W. Sue has found "that most theories of counseling share characteristics of the white middle class." He goes on to write, "Culture-bound traits of counseling dictate an individual orientation (I-Thou), verbal/emotional/behavioral expressiveness, openness and intimacy, obtaining insight, spontaneity, distinctions between mental and physical well-being and a verbal/linear/analytic (cause-effect) approach." "Counseling the Cutlurally Different: A Conceptual Analysis," 55 THE PERSONNEL AND GUIDANCE J. 422,422 (1977).

[110] Wright et al emphasize throughout their book that the bureaucratic approach to delivering services is culturally bound. "Organizational philosophy and culture tend to be bound to the dominant culture and, therefore, too narrow. The interpersonal distance and detachment required by technology (professional intervention) and good bureaucratic practice frequently run counter to minority cultural preferences and expectations. Thus minorities of color who seek help find themselves in an organizational environment of ambivalence: On the one hand, its

On the one hand, the earlier discussion of the barriers inherently present in attempts to communicate across cultural boundaries shows that such obstacles are natural. Cultural bias is inherent and perhaps cannot be fully escaped. However, in view of the interference it presents to meeting the responsibilities of the administration of justice, employees of the Judiciary have an ethical obligation to recognize and reduce as much as possible such interference and its negative effects.

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atmosphere bespeaks service; on the other, the atmosphere is alien, even hostile." Supra n. 107, at 175-176.

CHAPTER FOUR

SUMMARY OF FINDINGS

Introduction

The Supreme Court is responsible for "ensuring the integrity of the judicial process."[1] In its research and findings, the Task Force was guided by this rule as it touches upon equal access to the judicial system for linguistic minorities. Specifically, the Chief Justice's mandate to the Task Force included the following goals:

> 1. To identify all areas within the Judiciary where equal access to our courts may not be fully available due to linguistic barriers;
> 2. To document the nature and extent of the linguistic barriers presently existing and to evaluate current policies and practices regarding interpreters and translation services.

The Task Force conducted its work with those charges and the following guiding principle in mind:

> The courts should be equally accessible to all persons regardless of the degree of their ability to communicate effectively in English.

Accordingly, the Task Force carried out an extensive program of research and investigation with regard to the current status, practices and policies affecting court interpretation, legal translation and the delivery of court support services across linguistic and cultural barriers. The series of background reports embodying the major activities of the Task Force, the comprehensive resource manual of significant literature in the field, and the expertise of individual members of and consultants to the Task Force have provided the basis for these findings. This material includes concrete examples that illustrate specific areas of concern, analysis of the data presented, and conclusions based upon documented research.

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[1] State v. Williams, 93 N.J. 39,62 (1983).

The ultimate finding of the Task Force is this:

> THE SPECIAL NEEDS OF LINGUISTIC MINORITIES WHO HAVE SOUGHT RELIEF IN OR BEEN BROUGHT BEFORE THE COURTS OF NEW JERSEY HAVE NOT BEEN ADEQUATELY MET BY THE PRESENT APPROACH OF LEAVING TO EACH JUDGE, ADMINISTRATOR OR EMPLOYEE OF THE COURT SUPPORT SERVICES AT THE COUNTY OR MUNICIPAL LEVEL THE RESPONSIBILITY OF ELIMINATING THE LANGUAGE BARRIER.

This unregulated, unguided approach has severely impeded the meaningful access of linguistic minorities to the state's courts. However well-intentioned the efforts of individual judges and other court personnel have been, they are not enough. Services have been uneven and often substandard. The creation of a system to ensure that adequate services are provided to linguistic minorities is long overdue. The Chief Justice and the Supreme Court are to be commended for mandating that this critical area receive concentrated attention so that meaningful access to the courts for all citizens of New Jersey, regardless of language proficiency, will be assured.

This chapter will delineate specific adverse consequences of the present approach and will document the Task Force's findings, many of which are disturbing, in the following critical areas:

1. Court interpreting;
2. Translation of forms and other written communications of the courts;

3. Court support services generally, including services offered by the County Probation Department and other court offices;
4. Professional qualifications, ethics and training;
5. Administration of the services;
6. The need for legislative initiative; and
7. Problems of attitude.

The recommendations contained in the following chapter are based on these findings. While the focus is necessarily on the trial courts and actions the Supreme Court may take, where appropriate, problems found in offices outside the court system will be narrated.

FINDING #1

Persons providing court interpreting services generally do not possess requisite skills, knowledge and training.

Types of Interpreters Used

The types of interpreters that are used in New Jersey's courts vary considerably. Most of the state's judges (77%) reported to have worked with someone provided by the parties. In some instances such interpreters are professionals, but laypersons such as friends or relatives of the party are used in the vast majority of these cases.[2] Even children and juveniles are sometimes allowed to interpret in the courts.[3] Full-time, professional interpreters have been used by only 21% of the state's judges while 44% of the judges have used professional per diem interpreters.[4]

The predominant types of interpreters used vary considerably depending on the type of court. Judges in the District[5] and Municipal Courts see laypersons interpreting more than the judges of all other courts while judges in the Criminal Division of the Superior Court use laypersons the least.[6] The percentage of judges who rely on full-time, professional interpreters increases as the volume of interpreted proceedings over which they preside increases. Even so, the courts with the highest reported volumes of proceedings still rely more on interpreters provided by parties than on full-time, professional interpreters.[7] Virtually any bilingual or partially bilingual employee, regardless of title or level, is subject to being called on to interpret.[8]

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[2] See 9 B.R. 47-54 (Dec. 1983) for an extensive discussion of the types of interpreters who practice in the state's courts. After interpreters provided by the parties, the next kind of interpreter reported by the most judges (47%) to have practiced in their courtrooms is persons obtained randomly from the courtroom. The vast majority of these interpreters are certainly laypersons as well.

[3] 10 B.R. 14 (Apr. 1984) and 16 B.R. 36 (Apr. 1985).

[4] Ibid.

[5] The reader is reminded that this report uses the names of the courts that were studied, recognizing that such names have been changed. Hence the County District Court, which was replaced by the Special Civil Part of the Law Division of the Superior Court, and the Juvenile and Domestic Relations Court, which was replaced by the Family Division of Superior Court, effective December 31, 1983, will be referred to by their old names, recognizing that they no longer exist under those names.

Evaluation of the Quality of Interpretation

Summary of Evaluation Findings

The Task Force evaluated the performance of persons who interpret in the dominant languages (Spanish-English) that appear in the courts in an effort to assess the overall proficiency of persons who interpret in the vast majority of interpreted proceedings at the present time. It must be noted that the vast majority of persons who are relied upon to interpret recognize that they are not qualified for such a responsibility. Accordingly many "interpreters" recognize deficiencies in their skills and express a desire for training.[9] Conversely, there are some professional, highly skilled court interpreters (Spanish-English) who excel at their profession.[10] These findings are not intended to detract from the skill or effort of either professionals or lesser-skilled employees who work in another capacity.

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[6] Even so, 51 percent of the judges who preside over criminal matters reported using interpreters provided by a party and 30% have used bystanders in the courtroom. 9 B.R. 53 (Dec. 1983). Practices also vary widely according to county. For example, 28% of the judges in Ocean County have used bystanders in the courtroom while 63% of the judges in Union County have done so. See Table 39 at 51 of 9 B.R. for details.

[7] Almost half (43%) of the judges who preside over courts with 11% or more interpreted proceedings use full-time, professional interpreters, while almost two-thirds (63%) of those same judges reported using interpreters provided by a party. *Id.* at 54-55.

[8] 7 B.R. 7-9 (Aug. 1983). See also 16 B.R. 7-8 (Apr. 1985) and 22 B.R. 74 (Mar. 1984).

Three experts in Spanish-English court interpreting evaluated the quality of interpreting of 42 persons in the trial courts according to 27 separate criteria. Only 17% of the persons presently interpreting in the courts meet or exceed a minimum standard of acceptable proficiency.[11] They further found that of the eight skill areas the Task Force defined to be the most critical (*e.g.*, accuracy, objectivity, etc.), almost half of the interpreters performed at the highest professional level in none. Some of the interpreters whose performance was determined to be most deficient were official, full-time interpreters.

That evaluation project observed a total of 42 different interpreters who may be classified among eight types of interpreters. The only types of interpreters who met the minimum standard of proficiency were persons who could be defined as professional interpreters, as Table Two illustrates. Many of those who were either interviewed or submitted a questionnaire felt that too many of those interpreting in the courts are not qualified.[12] The presence of unqualified interpreters was found to be especially prevalent in the Municipal Courts. Only one of twenty-five interpreters who were observed in the Municipal Courts performed at the minimum, acceptable level of proficiency.[13]

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[9] 22 B.R. 76 (Mar. 1984); 16 B.R. 27 (Apr. 1985).

[10] 10 B.R. 49 (Mar. 1984). This includes both some official and free-lance interpreters who serve the courts on a per diem basis. As a group, the most qualified among these free-lance interpreters are those who have been certified by the National Registry of Interpreters for the Deaf, Inc. 18 B.R. 14 (Dec. 1984).

[11] 22 B.R. 31 (Mar. 1984).

Individual Criteria for Evaluating Interpreter Competence

The findings of the evalation team will be discussed according to the criteria which were listed in Chapter Three: (1) high level of proficiency in both languages; (2) broad general knowledge and specific knowledge of the law and court procedures; (3) ability to interpret accurately and comprehensively; (4) skill in the simultaneous and consecutive modes of interpreting; (5) use of appropriate techniques; (6) serving within ethical parameters; and (7) presenting appropriate evidence of qualifications (*e.g.*, certification, education/training and experience).

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[12] Judges, 9 *B.R.* 86-87 (Dec. 1983); Prosecutors, 11 *B.R.* 46 (Jun. 1984); Public Defenders and Legal Aid/Legal Services attorneys, 12 *B.R.* 22 (1983); and bilingual attorneys, 10 *B.R.* 35 (Apr. 1984).

[13] The twenty-five interpreters observed in the Municipal Courts included 7 official staff interpreters, 11 bilingual support personnel, 3 friends/relatives, 3 attorneys and 1 person selected randomly from the courtroom. The finding that the quality of interpreters is most deficient in the Municipal Courts was confirmed by bilingual attorneys. 10 *B.R.* 10 (Apr. 1984).

TABLE TWO

PROFICIENCY OF THE STATE'S INTERPRETERS

Type of Interpreter	Number of Interpreters at or above Minimum Proficiency	Number of Interpreters below Minimum Proficiency
Superior Court, Full-time, Official	4	6
Municipal Court, Full-time, Official	1	6
Sheriff Officers	1	1
Free-lance, per diems	1	1
Attorneys	0	3
Other judicial employees	0	14
Friend/relative of litigant	0	3
Randomly picked from courtroom	0	1

1. Language Skills

Interpreters were found to be most qualified in terms of pronunciation, grammar, general vocabulary and fluency in the two languages.[14] However, their proficiency in terms of technical vocabulary (which includes especially legal terms and concepts), regionalisms and slang/epithets is considerably less. Ten percent or fewer of the interpreters were found to have major problems with pronunciation, grammar or fluency, while 72% exhibited difficulty with Spanish slang/epithets, 48% had major shortcomings with Spanish regionalisms, and 43% had substantial deficiencies with technical Spanish vocabulary.[15] These findings are substantiated by other sources. While judges are generally satisfied with interpreters' language proficiency,[16] there is considerable evidence that many court interpreters are not sufficiently familiar with dialects, especially in the Spanish language.[17]

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[14] The weakest of these skills was general Spanish vocabulary, which 24% of the respondents scored poorly on while 20% scored poorly on general English vocabulary. 22 B.R. 14-15 (Dec. 1983).

An indirect measure of basic language skills is level of education. An interpreter should have the breadth of vocabulary characteristic of someone who has completed two years of college. The survey of court interpreters found that 14 years of schooling is the average amount of schooling completed by the state's court interpreters, while the average for persons serving in official, court interpreting positions is 13.3 years. Further, 31% of the interpreters had completed high school or less.[18] Accordingly, approximately half of the state's court interpreters do not meet this indirect measure of general language abilities.

2. Knowledge of Law and Court Procedures

The second major area of qualifications includes broad general knowledge and specific knowledge of the law and court procedures. The evaluators observed that one of the things the interpreters did best was follow court protocol and etiquette. Problems in this area were found with only 21% of the interpreters.[19] Judges who were surveyed were more dissatisfied with interpreters' comprehension of legal concepts, the rules of evidence and other matters than anything else.[20] Only one in ten of the judges was completely satisfied, whlie 33% reported being satisfied less than half the time and an additional 30% reported being not being satisifed at all that interpreters understood enough about court procedure to be effective.[21]

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[15] One-third or more of the interpreters also had major problems with technical English vocabulary, English regionalisms and English slang/epithets. Id. at 14.

[16] Half were completely satisfied and 40% were satisfied half or more of the time. Only 5% were satisfied less than half the time and 1% were not at all satisfied. 9 B.R. 65-66 (Dec. 1983).

[17] 10 B.R. 11,12,24 (Apr. 1984), 11 B.R. 42-43 (Jun. 1983), 15 B.R. 37 Dec. 1984) and 22 B.R. 39 (Mar. 1984).

[18] 15 B.R. 9-10 (Dec. 1984).

3. Accuracy and Completeness

There is widespread concern about the accuracy and completeness of court intepreting presently being performed. The evaluators of Spanish-English interpreters used the following primary criteria to measure accuracy and completeness: retains emphasis of speaker, uses same language level as person being interpreted, grasps and conveys speakers' meaning accurately, and relays all information comprehensively. An acceptable level of proficiency was not demonstrated in most cases: 22% retained the speaker's emphasis, 22% used the same language level as the speaker, 17% conveyed meaning accurately, and 20% relayed all information comprehensively.[22] This aspect of interpreting was of particular concern to the judges who reported that many interpreters fail to interpret verbatim.[23] This was also a major concern reported by bilingual attorneys,[24] Public Defenders and attorneys working for Legal Services and Legal Aid,[25] and was recognized as a concern by some interpreters.[26] Prosecutors viewed it with concern, but did not report it to be a problem to the same degree reported by the other respondents.[27]

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[19] 22 B.R. 15 (Mar. 1984).

[20] 9 B.R. 74 (Dec. 1983).

[21] 9 B.R. 66-68 (Dec. 1983). Inadequate familiarity of interpreters with such legal competencies was noted also by some prosecutors, 11 B.R. 45 (Jun. 1984) and bilingual attorneys, 10 B.R. 9-10,24 (Apr. 1984).

[22] Conversely, the following shows the percentages of interpreters who were evaluated at the lowest level of proficiency: 29% did not retain emphasis of the speaker, 17% did not use the speaker's language level, 24% did not

4. Interpreting Skills

The fourth criteria reviewed was the ability to interpret in the simultaneous and consecutive modes. No direct evidence was gathered on interpret-

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convey meaning accurately and 24% did not relay all information. 22 B.R. 15 (Mar. 1984). All four of these variables were ranked among the lower half of all variables observed in terms of observed competency.

[23] 9 B.R. 87-88 (Dec. 1983).

[24] This concern was expressed as being equally applicable to interpreters supplied by the courts and other interpreters. 10 B.R. 8-10,12-14 (Apr. 1984).

[25] 12 B.R. 5-8 (Jun. 1983).

[26] 15 B.R. 35 (Dec. 1984). It was also reported of court interpreters in Newark Municipal Court in 1972. R.C. Rodriguez, PRESENTLY EXISTING SITUATION ON COURT INTERPRETERS AND BILINGUAL SERVICES IN THE NEWARK MUNICIPAL COURT 33-35 (Dec. 1, 1972).

[27] 11 B.R. 8-11, 27-29. While this is the opinion of the Prosecutors as a group, some individual respondents expressed greater alarm about the degree to which court interpreters perform these skills at an acceptable level of proficiency.

One deaf person who had been assisted by an interpreter in court reported that the interpreter "Changed my words and did not sign exactly what was said" and another noted, "Interpreter did not interpret anything or everything other party said against me." 18 B.R. 14-15 (Dec. 1984).

ers' skills in the respective modes of interpreting. Rather, there is considerable inferential evidence. For example, as has been reported above, the evaluation of Spanish-English interpreters found considerable problems with the accuracy and completeness of the interpreters' services. While the evaluation of currently practicing Spanish-English interpreters did not distinguish between the various modes, there is no reason to assume that the shortcomings identified apply to one mode to the exclusion of the others. Another source of indirect support for this finding is the fact that the simultaneous mode is used in New Jersey's courts the least of all modes. The survey of the state's judges found that the simultaneous mode had been observed in 28% of the courts, the summary mode in 32% of the courts and the consecutive mode in 85% of the courts.

5. Interpreting Techniques

The use of appropriate interpreting techniques includes, for example, the use of hand signals to regulate the length of orations being interpreted. The evaluators found court interpreters to be most deficient in this category. Three out of five (59%) interpreters were rated at the worst score.[28]

6. Ethics

Interpreters were also evaluated in terms of impartiality and objectivity. While the majority were found to be basically objective and unbiased, a significant minority were not. On the one hand, fifteen (38%) of the respondents were given perfect scores, while 12 (30%) were found to have insignificant biases or lack of objectivity. On the other hand, six interpreters (15%) were moderatly biased or lacked objectivity while 7 (18%) were very biased and/or unobjective.[29] Concern about lack of objectivity or presence of bias was raised by coordinators of the Juvenile Conference Committees (JCC's) and bilingual attorneys.[30]

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[28] Only 17% were found to use appropriate interpreting techniques well. However, one of the consultants simply never saw any interpreting techniques used and, accordingly, did not indicate any score. If the persons she observed are added to the observations of the other two consultants, the percentage of persons who were found to use appropriate interpreting techniques declines to 12% and the percentage of persons who were rated the worst on this variable rises to 71%. 22 B.R. 14-15 (Mar. 1984).

Survey data are also available from the judges, who were asked, "To what degree are you satisfied that interpreters who practice before you understand the professional ethics of interpreting?" While most of the judges indicated general satisfaction, a substantial minority (33%) reported satisfaction less than half of the time.[31]

Several respondents to questionnaires expressed concern that interpreters too often have a bias against or for a defendant. The respondents include judges,[32] bilingual attorneys,[33] Prosecutors,[34] Public Defenders/Legal Services,[35] and interpreters.[36] The following ethical issues were raised by these respondents: collusion with attorneys, unauthorized practice of law, usurping the role of the judge, changing the flavor or substance of testimony to help or hurt a defendant, changing the level of language of material interpreted (usually simplifying language of judges and lawyers to "help the client understand"), making disparaging remarks about clients, and excessive rudeness to parties.

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[29] Ibid. Several examples of ethical problems observed in the conduct of this study may be seen at pp. 51-63.

[30] 23 B.R. 64 (Apr. 1985) and 10 B.R. 11 (Jun. 1984).

[31] One-fourth of the judges reported being completely satisfied and an additional 42% indicated satisfaction more than half of the time. Twenty percent were satisifed less than half, while 13% were not satisfied at all. 9 B.R. 68-70 (Dec. 1983).

7. Certification, Education & Experience

The vast majority (87%) of persons who serve as court interpreters have not been certified by any certifying agency and those who present some form of certification are not specifically or primarily certified as court interpreters.[37] Most people who interpret in the state's courts have no relevant training. The vast majority (88%) have never received any formal training in interpreting and 93% have never received any orientation to interpreting from the courts[38] or anywhere else. Further, most (69%) have received no formal education in law, legal terminology and legal procedures.

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[32] *Id*. at 88.

[33] 10 *B.R*. 11, 13, 31 (Apr. 1984).

[34] 11 *B.R*. 11, 28, 29, 35 (Jun. 1984).

[35] 12 *B.R*. 6, 14 (Jun. 1983).

[36] 15 *B.R*. 35 (Dec. 1984).

[37] *Id*. at 7-8.

Finally, the major qualification of interpreters in the courts is experience. Staff interpreters have worked an average of almost five years (4.9) while per diem interpreters have an average of almost seven years (6.8) of experience. However, many interpreters have one year or less of experience (23% of staff interpreters and 14% of per diem interpreters).[39] Given the deficiencies found by the evaluators, the quality of experience gained is at best uneven and, at worst, very damaging in that it tends to reinforce substandard practices.

Consequences

The evaluators found that one or more dimensions of the interpreters' performance had an actual or potential negative effect on the outcome of the proceeding, or interfered substantially with someone's understanding of the proceeding, in 73 of 142 cases. This suggests that slightly more than half of all interpreted cases observed were subject to one or more errors that actually potentially affected the proceedings negatively. These findings suggest that half of all interpreted proceedings in New Jersey may involve interpreting errors that potentially or actually affect the substance of such proceedings negatively.[40] Research conducted on court interpreting in New Jersey in 1980 by one of the principal designers of the certification examination for Federal court interpreters led to a similar conclusion: "My research in the state... leads me to believe that there is massive denial of due process of law in the criminal cases which require the use of language interpreters...."[41]

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[38] 22 B.R. 17-19 (Dec. 1984). No training is provided the state's court interpreters which meets any minimum level of professional competence. Such training as exists is so poor that it serves primarily to perpetuate existing problems. 22 B.R. 75-76 (Mar. 1984); 7 B.R. 9-10 (Aug. 1983).

[39] 15 B.R. 10-12 (Dec. 1984).

Another potential danger of substandard interpreting is that the integrity of the evidentiary process may be compromised. Although the Task Force cannot quantify the frequency with which the integrity of evidence is compromised by an interpreter, numerous examples have been observed. Actually or potentially critical testimony is often omitted completely or partially, added to, or amended.[42] Further, the tone of some testimony not infrequently undergoes transformation in the interpretation and may result in altered perceptions that jurors, attorneys, and others may be forming of a witness.[43]

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[40] These data come from the same data base which led to the writing of 22 B.R., but were not included in that report.

[41] Letter from Dr. Carlos A. Astiz to Robert Joe Lee (March 22, 1983). See 23 B.R. 61-62 (Apr. 1985) for the text of the letter.

[42] See 22 B.R. 36-43 (Mar. 1984) for concrete examples. Other examples may be found in 11 B.R. 51-52 (Jun. 1984) and 12 B.R. 5-7 (Jun. 1983).

[43] For example, testimony is often dressed up or down by interpreters. This happens in a variety of ways. A witness' foul language may be cleaned up by the interpreter such that the court never hears any foul language. The English interpretation may be rendered in poor English grammar that does not reflect the perfect grammar of the source language. In addition, some responses are made more formal (e.g., "Yes, your honor" instead of the witness' single word, "Yes"). See 22 B.R. 39-40,51 (Mar. 1984) for additional examples.

In addition, there is the added danger of interpreters who project their attitude about the credibilty of something a witness has testified through their own body and facial expressions.

The use of unqualified interpreters often interferes with the efficiency of proceedings. In view of the fact that most persons who interpret in the courts are not fully qualified, judges may take time to instruct interpreters. Six out of ten judges always or very often instruct interpreters prior to a proceeding, one-third of the judges instructs an interpreter always or very often during proceedings, while only 13% of the judges never instruct interpreters prior to the outset of a proceeding and only 6% never instruct interpreters during a proceeding.[44] Since there are an estimated 7,300-8,000 interpreted proceedings in the average month, the overall effect of providing such instructions on the efficient movement of cases appears to be substantial.

However, there are other ways court interpreters may impede efficiency. Proceedings are often unnecessarily prolonged when interpreters make errors. An erroneous interpretation of witness testimony often diverts the questioning of a witness and time is lost trying to discover how the line of questioning was derailed and what is needed to get back on track.[45] An attorney with Legal Services supplied the following example:

> An [official court interpreter]...was asked to interpret and was so poor that it took him close to five minutes and several attempts just to administer the oath to my client. Even then the translation was so poor that both I and the opposing counsel (who also happened to be Hispanic) were shaking our heads in disbelief and the judge himself had to call us to the bench and suggest we get someone else.[46]

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[44] 9 B.R. 37-43 (Dec. 1983).

[45] See 22 B.R. 49-50 (Mar. 1984) for the transcript of such an example.

[46] 12 B.R. 5 (Jun. 1983).

Sometimes proceedings such as trials have to be recessed in order to replace a dysfunctional court interpreter.[47] Changing testimony also introduces confusion into a proceeding when the questioning attorney is expecting certain answers based on knowledge of the witness, but receives unanticipated answers.[48] The same problem arises when answers that are misinterpreted in a way that appears nonresponsive. Such misinterpretations take time to unravel and may have the additional disadvantge of creating impressions on the jury or judge that are the fault of the interpreter, not the witness. Unavailability or tardiness also lead to delays within proceedings[49] and postponements.[50] Such situations raise the cost for the attorney or the court, especially when the interpreter is a free-lance interpreter charging by the hour.[51]

Finally, errors of interpreters can lead to costly mistrials and appeals. While the Task Force does not know how often such events occur in New Jersey, one mistrial and three appealed cases which were attributed primarily or partially to issues of accuracy in interpreting came to the attention of the Task Force during the past three years.

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[47] 12 B.R. 6 (Jun. 1983).

[48] See 22 B.R. 51 (Mar. 1984) for a case with such a problem.

[49] 10 B.R. 3-4 (Apr. 1984).

[50] Infra, p. 147. Also 22 B.R. 63-64 (Mar. 1984) and 23 B.R. 64 (Apr. 1985).

[51] 10 B.R. 4 (Apr. 1984).

FINDING #2

Procedural forms and documents used by the courts are not generally translated by professionals with specialized skills, knowledge and training, they are not always printed at levels of quality equal to that of the respective English versions, and they are not accessible equally to all linguistic minorities.

Forms and Other Documents

The incidence of translation of forms and documents is low, both at the state and county level. The quality of translation is uneven and any efforts to translate have been confined to the Spanish language. At the state level, no forms or documents have been written according to the rules for writing "easily translatable English." Rather, they are typically drafted by well-educated professionals who are not likely to draft in easily translatable English. Under the best of circumstances, the process of translating forms is often rendered difficult.[52]

Almost all of the few uniform forms which have been translated into Spanish were translated or reviewed by professional translators. Some, however, have not. One of these documents was evaluated by the Task Force and found to be excessively literal and to have used a number of anglicisms.[53] This suggests that any document translated by persons other than professional translators is probably deficient. At the very least, there is no assurance that translations performed by unqualified persons are adequate.

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[52] One of the problems that has been encountered by some who translate official forms and documents is that portions of the English version which is being translated is itself unclear or vague. There is hardly a time when a document's poor style or lack of clarity becomes more visible and acute than when the document is being translated. An ambiguous text forces translators either to assume what a documents means (which can result in translated versions that are substantively different from the master document) or to preserve the ambiguity of the original in the translation. Although the second of these results is the technically correct one, neither result is desirable. This was noted especially by a team of bilingual probation personnel who drafted a translation of the standard conditions for adult probationers. See 23 B.R. 29 et seq. (Apr. 1985).

In addition, there is no consistent pattern of securing official translations of state forms. Some forms undergo translation by professionals and are promulgated in a uniform format, but others are not. Some translations are issued with the expectation that they will be reproduced locally (with varying degrees of compliance), while others are printed in bulk for each of the counties and thereby necessitate no additional printing at the local level.

The Administrative Office of the Courts infrequently receives letters written in foreign languages, but when such letters are received, they are not usually translated by professional translators. While no complete evaluation has been made of all translations that are obtained, an evaluation of one translated letter suggests that translations made by bilingual clerical personnel are likely to be defective.[54]

The Task Force found that the volume of documents needing translation in the trial courts is much greater. Although 57% of the state's judges have never received documents that needed translation and 40% do so rarely, 3% of the judges do need this assistance often or very often, particularly in Hudson, Passaic, Cumberland, Union and Essex Counties.[55] Clients who seek to communicate with the courts in writing but who cannot write in English must either find someone who will write the letter for them or hope that recipients can either read the language or will secure a translation of the correspondence.

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[53] See id. at 29-41 for an extensive case study of the process used to develop a Spanish translation of the standard conditions of probation for adult probationers. Even though the translation was prepared by a team of bilingual probation employees, professional translators who evaluated the form found several flaws in the translation.

[54] See id. at 42-46 1985) for a case study.

What Is Translated

There is great variation, however, as to which forms and documents are translated. For example, a 1981 study of documents translated by the County Probation Departments found that the adult standard probation conditions had been translated by thirteen counties, the juvenile standard probation conditions had been translated in five counties, and seven counties had translated one or more other documents.[56] While undocumented, the Task Force believes that such variations exist in most, if not all, other court support offices. Other data reveal widespread concern that too few documents are available in translated versions.[57]

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[55] 9 B.R. 26-27 (Dec. 1983).

[56] For a review of the forms that have been translated by County Probation Departments, see the report by the Probation Administrative Management System of the Administrative Office of the Courts, HISPANICS AND PROBATION SERVICES: SOME PRELIMINARY EXPLORATIONS 16-19 (May 1982).

[57] Bilingual attorneys, 10 B.R. 19,21 (Apr. 1984); prosecutors, 11 B.R. 33 (Jun. 1984); Public Defenders and attorneys with Legal Services, 12 B.R. 9-11,13,18-20 (Jun. 1983); court interpreters, 15 B.R. 39-40 (Dec. 1984); bilingual court support personnel, 16 B.R. 32,39 (Apr. 1985); and the consultants, 22 B.R. 83 (Mar. 1984).

Who Translates?

At the trial court level, judges rely more on staff interpreters than on any other single group of translators. When performed by staff, translation is necessarily limited to the Spanish documents since staff interpreters are available only for Spanish. However, most judges rely on other persons, including relatives, community agencies, friends, as well as parties.[58] The TCA's have reported that they are not in a position to monitor the quality of translations produced in their vicinages because of the absence of persons qualified to perform such reviews.[59] Only one county has a line item in its budget for securing translations.[60] Further, one bilingual court support employee reported that some existing translations "...are quite poor."[61] The same deficiency has been reported by court interpreters.[62]

Even when many judges rely on official court interpreters for translation services, there is reason to question the quality of the translations.

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[58] 9 B.R. 54-57 (Dec. 1983). It may be presumed that many of the translations secured by parties are obtained from professional translators since they have an inherent interest in assuring that documents are translated accurately. However, the degree to which professional translators are relied upon by attorneys is unknown.

[59] 7 B.R. 30-31 (Aug. 1983).

[60] Ibid.

[61] 16 B.R. 32 (Apr. 1985).

[62] 15 B.R. 39-40 (Dec. 1984).

Very few court interpreters have received any training in translation.[63] A case study of a form translated by an official court interpreter found significant errors had been committed.[64] The assumption that an official court interpreter can translate accurately is not always the case in New Jersey. The same is true for bilingual court support personnel. While most bilingual court support personnel translate primarily for their own colleagues in the various court support services, one-third of them also are called on to translate for judges.[65] Even so, only one in ten has received any formal training in translation skills.[66]

In 1982 the Administrative Office of the Courts reviewed translations that had been performed in the County Probation Departments. Thirty-one documents were collected and studied. The audit of the forms did not include an assessment of the quality of the translations *per se*. That review found that not one of the translated forms was free of typographical, punctuation and spelling mistakes. It is fair to infer that the translations were performed by persons who could not write Spanish well and/or that the documents were not proofread by persons conversant in Spanish grammar.[67]

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[63] A survey of all court interpreters in the state found that only 9% had received any kind of training in translation skills. The percentage of official, staff court interpreters was not calculated. *Id*. at 18.

[64] 23 *B.R*. 29-41 (Apr. 1985).

[65] 16 *B.R*. 16-17 (Apr. 1985).

[66] *Id*. at 12.

[67] HISPANICS AND PROBATION SERVICES, *supra* n. 56, at 17-18.

The study also found that most (80%) of the forms had basically the same visual quality as their English counterparts. However, the related English forms were not supplied for eleven of the Spanish documents so no comparison could be made of all of the documents.[68]

Consequences

The inadequate translation of court forms and documents has several consequences. First, access of linguisitic minorities to justice is sometimes limited. Messages written in other languages and sent by parties to judges and other officers of the courts may not be translated accurately. This can restrict access to certain forms of relief and services and can interfere with the supervision process. Rights and procedures may not be fully understood because of faulty translations and result in unintended violations. More importantly, too many forms are not translated at all or are not universally available in all of the trial courts, representing an even higher risk that rights and obligations will not be fully understood by all clients. For example, one bilingual attorney reported, "My only experience is with the Spanish speaking who often do not understand various government forms which are printed in English and thus do not understand the possible results of non-compliance."[69] Another noted,

> Pleading and indictments are written in an English that English speakers frequently find difficult to understand. Non-English speakers seem to be totally at a loss when they

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[68] *Ibid*.

[69] 10 *B.R.* 21 (Apr. 1984).

> are served with a summons and complaint, to the extent that some even ignore the pleadings and have default judgements entered against them.[70]

Finally, translations are not available to any linguistic minorities other than Spanish-speaking clients. This may make the services unequally and unjustifiably inaccessible on the basis of national origin.

Secondly, the confidence of some linguistic minorities in the courts is reduced. For example, one in five of the bilingual court support personnel surveyed by the Task Force estimated that half or more of all Hispanics are offended or insulted by poorly produced Spanish translations.[71] The use of translated forms that are inferior in any way to their English counterparts can be viewed as producing second class forms for second class citizens. The use of forms and documents in English alone is certainly even more frustrating and alienating.

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[70] Id. at 27.

[71] 16 B.R. 23-24 (Apr. 1985).

FINDING #3

An appropriate level of court support services of the judicial system is not generally provided by bilingual and bilingual/multicultural personnel with essential skills, knowledge and training.

Court Support Services

There are insufficient numbers of bilingual and bilingual/multicultural personnel employed in the court system of New Jersey at the county and municipal levels and in the criminal justice system as a whole.

Availability of Bilingual Employees

1. Probation Officers

A 1982 study found that even though a Probation Officer--Bilingual (Spanish-English) title had been established in 1973, only three County Probation Departments had by that time called for an examination to fill the title. Further, only five persons, four in one county and one in another, were employed in the title in 1982.[72] A follow-up survey conducted in 1984 showed some progress. By mid-1984, at least six counties had called for the exam and thirteen persons representing five different departments were employed in the title.[73] Some Probation Officers speak Spanish, however, without having the official bilingual designation. Therefore both surveys attempted to document further the total number of Probation Officers who could speak Spanish. The first survey found that some 40 persons could be viewed as being bilingual, but the second survey found only 22.[74]

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[72] HISPANICS AND PROBATION SERVICES, supra n. 56, at 10.

[73] Administrative Office of the Courts, Probation Services Division, IMPROVED SERVICES FOR SPANISH-SPEAKING CLIENTS OF PROBATION SERVICES 13 (Mar. 1985). The data upon which this report was based were collected via a telephone survey of the Chief Probation Officers May 31-June 1, 1984.

The number of Probation Officers--Bilingual (Spanish-English) that would be needed to adequately staff all of the state's County Probation Departments has been estimated to be approximately 72.[75] That estimate was based on estimated numbers of Hispanic probationers. Since not all Hispanic probationers speak Spanish, this estimate may be slightly inflated. Even so, there is an estimated shortfall of 50 Probation Officers who speak Spanish fluently.

2. Other Employees of Probation Departments

Similar data have not been collected for paraprofessional and clerical personnel in the probation services. However, a 1982 survey of all Chief Probation Officers and heads of other court support services outside of probation provides indirect evidence that up to 34 more employees (investigators and clerical persons combined) of the probation departments speak Spanish.[76] In addition, at least three counties follow a deliberate practice of seeking and hiring bilingual investigators and clerical personnel to supplement the work of the department.[77] The use of existing bilingual personnel, regardless of their title, to interpret for colleagues is a widespread practice in the departments. Four of ten bilingual employees interprets for a colleague one or more times each week.[78]

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[74] HISPANICS AND PROBATION SERVICES, supra n. 56, at 12; IMPROVED SERVICES, ibid. There may or may not have been an actual decline. The first survey based its count on the Probation Personnel Inventory, a form completed by Probation Officers at the outset of their careers. Some of these are likely not to be truly bilingual, and this would account for much if not all of the greater number observed in the 1982 report. Meanwhile, the second report was based on counts by Chief Probation Officers of all Spanish-speaking Probation Officers working in their departments.

[75] IMPROVED SERVICES, supra n. 73, at 9.

[76] The data are found in 16 B.R. 6-7 (Apr. 1985). An estimated thirty-six percent of all persons surveyed were investigators or clerical personnel and 66% of them reported that they were bilingual primarily in Spanish and English. Assuming the actual responses are somewhat representative of all persons identified by the Chief Probation Officers, some 52 persons were likely to be investigators or clericals, 66% of which is some 34 persons.

Even with the combined efforts of existing bilingual Probation Officers, investigators and clerical personnel, there are clearly not enough bilingual employees in the probation departments and related support services.[79] Several of the bilingual employees themselves have reported that there simply are not enough bilingual workers or interpreters to come to the assistance of employees who cannot speak the language of their clients.[80]

3. Court Offices, Generally

The availability of bilingual support personnel in the other offices of the courts is unknown on a statewide basis. There is some evidence that some courts are generally sensitive to the need for bilingual personnel and that they sometimes fill positions such as receptionists, clerks, and bailiffs with bilingual personnel.[81] However, it is not very clear how universal such practices are. Some of the people surveyed have alleged that there are too few bilingual personnel working in the courts.[82] Further, a survey of bilingual court clerks in the Municipal Courts of Hudson was conducted since Hudson County and its courts have more Spanish-speaking persons than any other county. Court clerks play a critical role in serving the public insofar as they often help people who walk in off the streets file complaints. The survey found that half of the eight Municipal Courts that have 13% or more interpreted proceedings have no bilingual clerks and the remaining half employ only one.[83] It is likely that one bilingual person is inadequate in those municipal courts that serve high numbers of Spanish-speaking persons. If only one person is employed, there is no bilingual employee to back the person up when she is out sick, gone to lunch, or absent for any other reason.[84] It is clear that the Municipal Courts of Hudson County do not have adequate bilingual staff among their court clerks, but it is not known to what degree this deficiency prevails in the Municipal Courts of the other twenty counties.[85]

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[77] HISPANICS AND PROBATION SERVICES, supra n. 56, at 37-38,43,47.

[78] 16 B.R. 16 (Apr. 1985).

[79] The related support services implied here are those services historically related by probation which are outside of probation depatments in some counties. These include P.T.I., T.A.S.C, juvenile intake and bail programs.

[80] 9 B.R. 99 (Dec. 1983); 16 B.R. 31 (Apr. 1985).

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[81] This was a general observation of the consultants who audited the Spanish-English interpreters. 22 B.R. 74 (Mar. 1984).

[82] Attorneys with Legal Services, 12 B.R. 10 (Jun. 1983) and court interpreters, 15 B.R. 41 (Dec. 1984). Other sources have already been cited, *e.g.*, bilingual court support personnel.

[83] The survey was conducted in November, 1983, and the data are reported in 23 B.R. 47-48 (Apr. 1985). It should be noted that none of the four remaining courts had a bilingual court clerk, but since they have much lower volumes of Spanish-speaking clients, the need for such employees may not be justified.

[84] This problem was reported by a bilingual court clerk. See the interview in 23 B.R. 13 (Apr. 1985).

Persons in bilingual job titles are sometimes used inadequately or inappropriately. For example, some bilingual support staff are underutilized. They are not placed where their skills can be fully used. Other personnel who have been hired in bilingual positions are not truly bilingual. Others are overwhelmed by the volume of work when expected to deliver bilingual services throughout a department and are rendered less effective.[86]

If courts are not served by sufficient numbers of bilingual personnel then at least a similar if not greater shortage of bilingual/multicultural personnel exists. While not everyone who is bilingual is also multicultural, most bilingual persons are to some degree also multicultural.[87] It is clear that there are not enough Spanish-speaking Probation Officers who are also fluent in Hispanic culture and its subcultures. Therefore, most Hispanic clients of probation services receive services from persons who neither speak their mother tongue nor are familiar with their cultures and subcultures. This has been recognized especially by the Supreme Court Committee on Pretrial Intervention.[87a]

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[85] In a 1972 study of the Newark Municipal Court, the investigator tried to call the Traffic and Violations Division twenty-five times and was able to reach a Spanish-speaking person only once. Rodriguez, supra n. 26, at 23.

[86] 16 B.R. passim (Apr. 1985).

[87] Conversely, while some people may be multicultural without also being bilingual, this is unusual. F. Grosjean, LIFE WITH TWO LANGUAGES: AN INTRODUCTION TO BILINGUALISM 157 (1982).

4. Outside of the Judiciary

The scarcity of bilingual personnel is not unique to the Judiciary. The little evidence that has been accumulated suggests that the availability of bilingual and bilingual/multicultural support services is at least as scarce among the outside agencies upon which the support services rely. For example, it has been reported that facilities that deliver linguistically and culturally fluent services for alcoholics are "desperately" lacking in Union County.[88] Based on the reports of bilingual court support personnel, this situation appears to be similar in other counties. Some of these personnel claim that some outside agencies not only do not have sufficient bilingual and multicultural capacities to serve clients of the Judiciary, but are unwilling and reluctant to try to deliver services to linguistic minorities.[89] In addition, a report by the Puerto Rican Congress of New Jersey, Inc., on the representation of Hispanics in the work force of the State of New Jersey implies that programs staffed by employees of the State are not adequately staffed by bilingual and bilingual/multicultural employees. For example, only 3.2% of the employees of the Department of Human Services are Hispanic, most of whom are probably bilingual.[90] However, some private agencies are funded by the state to deliver social services to Hispanics.[91] Finally, the lack of support services for deaf persons under various types of court control has been reported, especially alcohol and drug treatment as well as mental health services.[92]

[87a] [FINAL] REPORT 38 (Jun. 19, 1981).

[88] M. Blood, "Alcohol Abuse Facilities Called Lacking in County," DAILY JOURNAL, Sept. 13, 1984, at 10.

[89] 16 B.R. 33 (Apr. 1985).

Just as there are many areas where the Judiciary needs to improve its services, the related, outside agencies on which the Judiciary often relies for support services need to be improved, too. These services include, for example, mental health, welfare, employment, health and education. In many instances, services for courts' clients are available from outside agencies for persons who speak English but not for linguistic minorities. Allegations have been made that in some instances, these agencies resist suggestions that they employ bilingual personnel.[93]

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[90] The Department of Human Services has more Hispanic employees than any other department and the second largest percentage (after the Public Advocate, with 4.0%) of employees who are Hispanic. THE UNDERREPRESENTATION OF HISPANICS IN THE WORK FORCE OF THE STATE OF NEW JERSEY 40 (1984).

It should be noted that the degree to which bilingual and bilingual/bicultural services are available from state offices probably varies. For example, at the instigation of Resolution 289 of the Joint Appropriations Committee for FY 1980, a bilingual Hispanic Parole Officer has been funded for each of the nine district offices in the Bureau of Parole.

[91] R. Filipponi, "Private Agencies Provide Services for N.J. Hispanics," 4 HUMAN SERVICES REPORTER 1 (Sep. 1981).

[92] A.L. Terzian and M.E. Saari, EMPLOYMENT AND RELATED LIFE EXPECTANCIES OF DEAF PERSONS IN NEW JERSEY 90-98 (1982). This report interestingly found that Hispanic deaf persons appear to underutilize certain services. Ibid. at 95. Interview with Norman Salt, Special Projects Coordinator, Division of Alcoholism, in Trenton (May 3, 1985).

[93] 16 B.R. 33 (Apr. 1985).

One of the areas of greatest concern outside the Judiciary is the delivery of mental health services. The Task force did not conduct field studies of current practices in this field, but the review of the literature suggests that it is very likely that many cultural and linguistic minorities referred by the Judiciary to mental health professionals have a high risk of being inappropriately diagnosed and inadequately treated.[94] The likelihood of incorrect diagnoses and inadequate therapies is just as likely to affect deaf and hearing impaired clients as ethnic minority clients.[95]

Even though they are not "court support services" as the Task Force has defined the term, police departments and the offices of the Public Defender and County Prosecutors are related offices in the administration of justice. No systematic evaluation of the presence of bilingual personnel was made of these offices, but there are suggestions made by criminal justice system personnel that at least some offices of these agencies do not have adequate bilingual personnel to serve the non-English-speaking public. This has been observed of the Prosecutors' and Public Defender's offices by the Task Force's consultants[96] and some prosecutors.[97] Inmates in state prisons have made similar complaints about Public Defenders.[98] Some prosecutors[99] and court interpreters[100] have made the same observation with respect to some police departments.

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[94] See 20 B.R. 58-69,73-74 (May 1985). Note also, for example, that the State Board of Education has required that evaluations conducted in order to determine educational handicaps "shall be conducted in the native language of the pupil" and that "A determination of the pupil's communication skills and dominance in English and the native language shall be completed prior to any other evaluation procedures." N.J.A.C. 6:28-1.6(c).

[95] See, for example, DEAFNESS AND MENTAL HEALTH (L.K. Stein, E.D. Mindel, and T. Jaboley eds. 1981), E.S. Levine, "Psychological Evaluation of the Deaf Client," in HANDBOOK OF MEASUREMENT AND EVALUATION IN REHABILITATION 269 (B. Bolton ed. 1976), and PSYCHOLOGY OF DEAFNESS FOR REHABILITATION COUNSELORS (B. Bolton ed. 1976).

Consequencies

The cumulative effect of these findings supports a conclusion that insufficient numbers of bilingual and bilingual/multicultural personnel are employed at all stages of the criminal justice system in New Jersey. Some Hispanic professionals at the Department of Corrections who have extensive contact with Hispanic prisoners reported that Hispanic prisoners are surprised to find Spanish-speaking prison workers and unload their stories with great surprise, saying, "You are the first one I could talk to." This shows that not only is there considerable miscommunication or noncommunication at the arrest and court stages, but that such failures of communication have lasting effects which bear costs to other government agencies.[101]

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[96] 22 B.R. 84-85 (Mar. 1984).

[97] 11 B.R. 14,32 (Jun. 1984).

[98] Many Hispanic prisoners claim that neither they nor their families could communicate effectively with defense counsel. In part this means no knowing participation in plea bargains as they were allegedly not prepared by their attorneys nor did they understand what the plea bargain process meant. This point is consistent over time as a 1976 survey of Hispanic prisoners in New Jersey's prisons and jails found that 35% indicated no problem communicating with their defense counsel, 23% had some difficulties communicating with counsel and 42% had a significant amount of difficulty. R.J. Lee, HISPANICS: THE ANONYMOUS PRISONERS 62 (Aug. 1976). The point was made again most recently by bilingual employees of the Department of Corrections who work extensively with Hispanic prisoners. This was listed as one of the major themes they hear from Hispanic prisoners. Inteview with Abraham A. Espada, Director, and Manuela Farrell, Human Resources Development Specialist, Bureau of Community/Professional services, Division of Adult Institutions, Department of Corrections, in Trenton (November 27, 1984). Notes from the interview are reported in 23 B.R. at 17-20 (Apr. 1985).

Another major concern is that attorneys sometimes rely on prisoners to interpret while interviewing incarcerated clients. 12 B.R. 13 (Jun. 1983) and 16 B.R. 36 (Apr. 1985).

[99] 11 B.R. 15,33 (Jun. 1984).

[100] 15 B.R. 40 (Dec. 1984).

There are several negative consequences of this dearth of bilingual personnel and of inappropriate use of bilingual employees. First, investigative reports prepared by the court support services may be inaccurate or misleading. For example, Task Force has heard both from interpreters[102] and the Hispanic Team of the Department of Corrections[103] that many Hispanics are being labeled as having an AKA when they actually do not have an alias. Presentence report writers and police often mistakenly report an alias due to mistranscription of Hispanics' names or misunderstanding of Hispanic naming conventions. In the first instance, a police officer or Probation Officer who is interviewing a

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[101] See the following for examples of the same problem in New York City: New York City Board of Correction, THROUGH THE VEIL OF PARTIAL COMPREHENSION: NEW YORK CITY'S HISPANIC DEFENDANT AND THE CRIMINAL JUSTICE SYSTEM (Mar. 19, 1973) and New York Lawyers' Association, Special Committee on Penal and Correctinal Reform, REPORT ON THE FAILURE OF THE CRIMINAL JUSTICE SYSTEM TO MEET THE NEEDS OF THE SPANISH-SPEAKING COMMUNITY IN NEW YORK CITY (Aug. 1975).

[102] Telephone interview with Lucy Rodriguez, Senior Court Interpreter, Passaic County Courthouse (November 27, 1984).

[103] Inteview with Espada and Farrell, supra n. 98.

Hispanic with a heavy accent or who speaks no English at all may not know how to transcribe the name elicited from the interviewee. The name is transcribed incorrectly and, when another officer makes a different (perhaps even correct) transcription later in the process, the defendant often inherits thereby an alias. In the second instance, officers fail to understand Hispanic naming conventions. Hispanics receive both the father's name and the mother's name as part of their surname. Hence, the surname could be, for example, Garcia Lopez. But if asked by an officer, "What is your last name?," the typical response would be Lopez, as it is the last name. When the defendant thus becomes known on the record as Lopez, but uses Garcia later, the AKA is added.

Such an error on the part of officers of the law can have serious effects on a defendant's future. It leads judges and others to doubt the defendant's credibility. Since the use of an alias is also a commonly used predictor of recidivism, judges and court support personnel may treat the person as likely to recidivate, resulting in higher bail or longer sentences. While the actual number of Hispanics who are unfairly reported to have an alias is unknown, it appears to be a common practice that affects large numbers of Hispanic defendants.[104]

Probation Officers sometimes rely on prisoners to interpret when conducting interviews in county jails. This practice has been reported by court interpreters,[105] the consultants,[106] bilingual court support personnel,[107] and previous research.[108] Only three counties are known to have written policy forbidding the use of inmates as interpreters.[109]

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[104] Ibid. When pressed to give an estimate, Mr. Espada and Ms. Farrell guessed that from 20 to 25% of Hispanic prisoners whose primary tongue is Spanish and who speak little or no English unfairly receive such an AKA.

There are several reasons why inmates (and, by implication, probationers and other "peers" of clients) should not be used as interpreters. First, the the use of such "interpreters" violates the confidentiality of the interview. A fellow prisoner is not likely to either appreciate or respect the importance of confidentiality. Second, there is no premium on providing an unbiased and disinterested person to serve as an interpreter. Third, even if the inmate is not biased, he is surely not qualified to interpret. The cumulative effects of using prisoners to interpret include the potential for betraying the confidentiality of information, the reluctance of interviewees to disclose information (with the attendant conclusion that some interviewers draw and report that a defendant is evasive or uncooperative), and the entry of false or distorted information in the report.

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[105] 15 B.R. 35 (Dec. 1984).

[106] 22 B.R. 79 (Mar. 1984).

[107] 16 B.R. 36 (Apr. 1985).

[108] HISPANICS AND PROBATION SERVICES, supra n. 56, at 1-2,20-23.

[109] The counties are Bergen (Letter from Richard L. Albera to Harvey M. Goldstein [Sept. 24, 1982]), Union (Letter from Ross H. Doyle to Hon. Herbert S. Alterman [Dec. 19, 1982]) and Warren (Letter from Robert C. Rudewick to Harvey M. Goldstein [June 8, 1982]).

Once a report includes such an error or omission, the effects may be difficult if not impossible to eradicate. Even though clients have the right to review such reports, once the report has been read by the judge a certain impression has been made. Attorneys who catch the errors may be able obtain a partial or complete correction of the written record, but authors of the reports may resist such changes.[110] Many attorneys may not be able to recognize the errors.

Not only are investigative reports often inaccurate; they are also often likely to be less thorough and less complete. Bilingual court support personnel have reported, for example, that some staff who cannot communicate effectively with an interviewee make less of an effort to explore problems and issues fully while others, even though they try harder due to the language barrier, have to settle for a less complete interview.[111] Sometimes this also means a victim's statement is less complete than it would have been had the victim spoken English.[112] The lack of thoroughness in presentence reports has been noted by the Hispanic Team of the Department of Corrections. This group of bilingual professionals has found that presentence reports on Hispanic probationers are often superficial.[113]

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[110] See a case example in HISPANICS AND PROBATION SERVICES, supra note 56, at 1-2,20-23. The report does not describe the outcome of this case, which was that few of the necessary changes in the presentence report were ultimately made. A similar case is reported in 16 B.R. 36-37 (Apr. 1985).

[111] 16 B.R. 31 (Apr. 1985).

[112] Id. at 39.

[113] Interview with Espada and Farrell, supra n. 98.

The likelihood that services delivered to linguistic minorities will be inferior extends to other areas as well. For example, some linguistic minorities have been denied services when limited English-speaking skills were misinterpreted to be signs of mental retardation.[114] Complaints in Municipal Courts sometimes cannot be taken, forcing complainants to return with an interpreter, discouraging them from making the complaint at all, or making them rely on persons who happen to be standing around in the hallway. Linguistic minorities who speak a little English and who attempt to file complaints in Municipal Courts often find that their complaints are completed incorrectly (e.g., individual charges being omitted).[115] In addition, officers unfamiliar with cultural norms often misinterpret body language, imputing unintended motives or acts to persons under supervision. Unfamiliarity with clients' cultures also means increased inability to deliver services that effectively build upon cultural strengths.[116]

The fact that linguistic minority clients are often obligated to bring their own interpreter also imposes a standard that is not imposed upon English-speaking clients. This requires linguistic minorities to assume greater costs and to be more dependent on friends and relatives than English-speaking clients.

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[114] 16 B.R. 37 (Apr. 1985).

[115] 23 B.R. 13-14,47-48 (Apr. 1985).

[116] See 16 B.R. 32-33,39 (Apr. 1985) and 20 B.R. 77-81,83-89 (May 1985) for examples and further discussion of the principles of intercultural service delivery.

Services are often delivered in a less timely fashion to linguistic minorities. Clients sometimes have to make multiple trips to the office, sometimes in order to locate and bring their own interpreter and other times to enable an absent, bilingual staff person to return or for a professional interpreter to be located.[117] Calls to make appointments with support personnel often cannot be completed due to the language barrier. This sometimes results in delays (e.g., delays in scheduling an interview for a presentence report).[118] Sometimes persons can be detained in custody longer because no bilingual personnel are available to expedite bail interviews.[119] Linguistic minority clients often have to wait longer to see service providers than English-speaking clients. Even when a support unit has a bilingual staff person, a linguistic minority client has to be refused service by bilingual staff under some circumstances (e.g., if the officer knows the client personally, lives near the client, or if the client lives in a town outside the officer's service area).[120] This delay in or lack of delivery of services may result in clients' (1) concluding that they cannot rely on the support services and then going to someone else for assistance, (2) beginning to miss appointments out of frustration, or (3) leaving the office when they find no one can communicate with them.[121]

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[117] 16 B.R. 35-37 (Apr. 1985).

[118] Ibid.

[119] Id. at 38.

Until recently there were no bilingual staff who could conduct bail interviews in Spanish or interpret for persons conducting such interviews in Atlantic County. This meant that bail interviews of Spanish-speaking detainees were conducted an average of 4 to 5 days later, resulting in longer periods of pre-bail incarceration simply because of a langauge barrier. Telephone interview with Ramona Jones, Assistant Trial Court Administrator (Apr. 24, 1985).

A bilingual attorney whose identity shall remain confidential tells the story of a migrant farm worker who, several years ago, was arrested for trespassing, having lost his way back to the work site and spent the night in someone's yard. The attorney just happened to appear in Municipal Court in the municipality where the person had been arrested and was detained. The judge asked him if he would interview the prisoner, who had been detained for several days already, since no one could speak to him. The attorney did so, and the man was released shortly thereafter.

Linguistic minority clients are often left bewildered as to where they are supposed to go, whether their case is completed, what their obligations are (e.g., conditions of pretrial release or probation), and what services and resources they are entitled to. The Task Force has been advised of the following kinds of situations: persons on bail or on probation who have had their privileges revoked or have been incarcerated for noncompliance with the conditions of release when they never knew they were bound to the conditions; persons learn about special programs (e.g., I.S.P., P.T.I., T.A.S.C.) late or not at all; persons who are eligible for certain benefits (e.g., social security) are less likely to learn of their eligibility, etc.[122]

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[120] Id. at 37.

[121] Id. at 31,36-37.

[122] Id., at 39.

FINDING #4

Existing procedures for establishing qualifications are inadequate for court interpreters in the foreign languages, adequate for court interpreters for the deaf and hearing impaired and for bilingual court support personnel in public contact positions, and procedures do not exist for establishing qualifications of legal translators or bilingual/multicultural court support personnel. Court interpreters and legal translators have had inadequate opportunity to develop their professional skills through training and education and are not guided by any binding canons of ethics.

Interpreting and translating are performed in the courts without defined qualifications for personnel, articulated ethical standards or opportunities for initial and continued training.

Qualifications

Each of the four major types of bilingual personnel has a different combination of skills as was demonstrated in Chapter Three. Accordingly, the kinds of qualifications that should be demonstrated prior to being employed vary for each of the four types. The Task Force's findings with respect to each type will now be presented.

To begin with, very few persons who serve as court interpreters have any professional credentials at all. The Task Force's survey of court interpreters found that only 13% had any form of certification[123] and the survey of bilingual court support personnel found that only 6% of them had a related certificate.[124] Accordingly, concerns about the quality of existing procedures to certify court interpreters are mitigated somewhat since so few persons have such credentials. However, this is a problem that has been noted by several TCA's.[125]

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[123] 15 B.R. 7 (Dec. 1984).

Existing procedures for establishing the qualifications of court interpreters in foreign languages vary considerably and none of the current modes is adequate. Persons who are employed on a full- or part-time basis may be chosen on the basis of certification by the Department of Civil Service, passage of an examination administered by the head court interpreter in a county, or on the basis of no demonstrated skills at all. Persons who are employed on a per diem basis are typically picked by an agency or simply on the representation of the court interpreter with no independent evaluation. In short, there is no uniform procedure for establishing the qualifications of persons who serve as court interpreters and, in many instances, there has been no thorough evaluation of a person in terms of the skills outlined in Chapter Three. All of the current modes are inadequate for the following reasons.

The certification process of the Department of Civil Service has been in flux throughout the last several years. When the Task Force first evaluated the Department's procedures for certifying court interpreters, it found that those procedures did not test any translating or interpreting skills, or ability to write either English or Spanish.[126] Further, the test's evaluation of language proficiency failed to establish competence in both languages at the level required for functioning in the courts.[127] The test measured only whether a person is bilingual with no assurance that the extent of bilingual ability matches the level needed for serving in the courts. No related professional skills were tested. Finally, the Task Force observed that the language test was administered by persons of questionable competence as examiners.[128]

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[124] 16 B.R. 12 (Apr. 1985).

[125] 7 B.R. 4 (Aug. 1983).

[126] See 3 B.R. 8-11 (Dec. 1982).

Since that time the Department of Civil Service has made improvements in the exam. There is now a translation section (English-Spanish only) and plans are in place to use examiners with extensive credentials in the future. However, there is still no testing of interpreting skills, Spanish-to-English translating skills, or knowledge of related ethical issues.[129] The effect of these shortcomings are minimal since only one of four counties with full-time, official court interpreters relies primarily on the Department's certification procedures for obtaining court interpreters. The remaining counties with full-time, official court interpreters either have no testing device or fashion their own. The screening devices that are used locally are not adequate for assuring the courts that persons who pass them possess the necessary knowledge and skills to function effectively as court interpreters.[130]

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[127] As was noted in Chapter Three, this level is the level of vocabulary characteristic of someone who has the equivalent of two years of college. Supra at p. 62.

[128] 3 B.R. 10-11 (Dec. 1982).

[129] See Appendix C, id. at 31, for a summary of the new program.

Per diem interpreters are obtained from two primary sources. First, some counties make extensive use of translation agencies. Some court administrators believe this practice brings in a higher level of skill since such agencies typically screen the people they supply.[131] Second, a mere representation that one is a court interpreter may be sufficient in some instances.

The Task Force's evaluation of currently practising Spanish-English court interpreters has found that none of these methods and non-methods satisfactorily establishes court interpreting credentials.[132] That evaluation found no correlation between level of skill and whether any particular form of "certification" had been employed. For example, the study found, "[O]fficial interpreters employed by the Judiciary are, as a group, no better than bilingual employees who fill other positions [and have no credentials as court interpreters] but are called on to interpret."[133]

The situation is different, however, for court interpreters for the deaf. By law, they must have been certified by the National Registry of Interpreters for the Deaf, Inc.[134] The Task Force did not evaluate any of these interpreters, but notes that, as a group, these interpreters enjoy a good reputation for excellence--especially when compared to interpreters in other languages.[135]

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[130] 7 B.R. 6-7 (Aug. 1983).

[131] 7 B.R. 14 (Aug. 1983).

[132] This conclusion was published over a decade ago as well. Rodriguez, supra n. 26, at 14-15

[133] 22 B.R. 32 (Mar. 1984).

The second job type to be examined is the bilingual employee in a public contact position. The Department of Civil Services tests the vast majority of these positions as bilingual variants of primary positions (e.g., receptionist, clerk). Since these positions require minimum bilingual skills, and that is what the Department's tests certify, the Task Force finds that current procedures are adequate for certifying these persons.

The remaining two types of positions, legal translators and bilingual/multicultural direct service court support personnel are unique. Neither has been established or is recognized by the Department of Civil Service or the Judiciary. Accordingly, there is no certification of any kind in this state for either position.

Ethical Aspects of Effective Performance by Court Interpreters and Legal Translators

There are no binding canons of ethics governing the professional services rendered by court interpreters or legal translators. Codes of ethics are in force for most employees of the Judiciary and for all attorneys and judges.[136]

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[134] See discussion in finding #6 for details.

[135] 12 B.R. 8 (Jun. 1983). In addition, as the recommendations will show, the Task Force recommends that this certification process be maintained with only slight additions.

[136] "The Rules of Professional Conduct and the Code of Judicial Conduct of the American Bar Association, as amended and supplemented by the Supreme

Almost all persons serving the judicial branch of government are prohibited from holding or running for elective public office, engaging in political activity, or, without prior approval, holding any other public office, position or employment.[137]

Several of the codes mentioned above regulate in detail the dimensions of professional service. However, no equivalent canons of ethics have been adopted by the Supreme Court and none is binding on all persons who interpret in the courts. There is only one standard that has the force of law that can be viewed as an ethical requirement for court interpreters, and it has not been promulgated as such. Taken together, N.J.S.A. 2A:81-12 and State in the Interest of R.R.[138] appear to prohibit the service of an interpreter who has an interest in a case (e.g., typically a relative or friend). As previously stated, relatives and friends continue to be used as court interpreters.

Some court interpreters are sworn before they interpret. This is apparently required by Evid. R. 19, but the oaths that are used vary from court to

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Court and included as an Appendix to Part I of these rules, shall govern the conduct of the members of the bar and the judges of all courts of this State. R. 1:14.

[137] R. 1:17.

[138] 79 N.J. 97 (1979). The Appellate Division recently ruled in an unreported opinion that the sister of a rape victim could interpret because of the sister's "dual speech difficulty" (she was also retarded) and the judge's appointment of an official interpreter to guard against impartial interpreting. State v. Rodriguez, No. A-1108-81T4 (App. Div. Mar. 3, 1983).

court and some judges rarely or never swear interpreters at all.[139] Court interpreters and legal translators who are members of professional associations pledge to honor the codes of ethics of the respective associations, some of which were noted in Chapter Three. However, this is a strictly voluntary arrangement with limited enforcement. In addition, very few court interpreters and legal translators are members of such associations so they tend to be neither bound by or aware of such codes of ethics.[140]

Many difficulties that arise during or outside of court proceedings are a direct result of the lack of consciousness of such problems on the part of all officers of the court. Judges have no standards by which to monitor an intepreter's performance, attorneys often become concerned only when something occurs to the detriment of their client, and many if not most court interpreters are not fully aware of the range of ethical issues that impinge upon the performance of their duties. Accordingly, the courts in general and the court interpreters in particular lack guidance that both protects them and provides for ethically sensitive practice in the best interests of the clients and the administration of justice.

Several ethical dilemmas that court interpreters face have been reported to the Task Force. Two examples illustrate some of the more difficult dilemmas. First, when a court interpreter has been called to a police lockup to help the police interrogate an arrestee, and the arrestee is badly bruised from what the interpreter learns is probable police brutality, what should the interpreter do?[141] Second, court interpreters often find themselves interpreting for a client who has not been prepared for the proceeding and who, due to limited formal education and contact with the courts, is not understanding what is being said, even though the proceedings are being fully interpreted. If this involves inadequate preparation by the client's attorney, what obligation does the court interpreter have?[142] If the client is not understanding the proceedings and is not grasping the meaning of significant aspects of the proceedings, what should the interpreter do?[143]

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[139] Most judges (85%) always swear interpreters, while 7% do so rarely or never. The practice of swearing in interpreters varies significantly according to both county and type of court. 9 B.R. 36-39 (Dec. 1983).

[140] Only 6% of the court interpreters surveyed reported membership in one or more professional associations. 15 B.R. 19 (Dec. 1984). No bilingual court support personnel who are relied on to interpret or translate is a member of such a professional association. 16 B.R. 12 (Apr. 1985).

Training and Continuing Education

Court interpreters have had inadequate opportunity and support to develop their professional skills through training and education. The professional development of court interpreters will be discussed in terms of training obtained prior to serving as a court interpreter, initial orientation at the outset of service and ongoing, continuing education throughout service. Generally speaking, the state's court interpreters have received very little training. The survey of the interpreters indicates that only 12% had received any outside training in interpreting and only 7% had received any kind of orientation.[144]

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[141] 15 B.R. 31,40 (Dec. 1984) and 23 B.R. 15 (Apr. 1985).

[142] 15 B.R. 30-31 (Dec. 1984) and 16 B.R. 30 (Apr. 1985).

[143] The last example presents a tremendous temptation for the interpreter to explain rather than to interpret. Instead of maintaining the level of language of the source language, many simplify or explain at what they think is the level at which the client can understand. One official court interpreter, who spoke under the promise of confidentiality, indicated that she would rather quit than not be able to make sure that such clients understand proceedings because no one else--not the attorney and not the judge--will take the time to do so. Hence she feels ethically bound to make up for what appear to be the shortcomings of others. See 15 B.R. 30-31,38 (Dec. 1984) for additional examples.

These findings are consistent with the reports of court administrators. There is no record that any court requires applicants for staff or per diem court interpreting work to have prior training. Some courts provide an unstructured orientation program for new staff court interpreters,[145] but only one county reports providing orientation for other kinds of court interpreters.[146] These orientation programs, where they exist, have been found to be generally inadequate.[147] The fact that any exist at all reflects some recognition that such training is needed. However, ineffective orientation programs do little more than perpetuate existing patterns which the Task Force has found are often inappropriate.[148] There is no statewide program that provides for either initial training or continuing education for court interpreters. One county has sent its staff interpreters to a college for formal training.[149]

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[144] 15 B.R. 18-19 (Dec. 1984). A survey of bilingual court support personnel documented that only 6% of these persons had received any training in interpreting and only 9% had received some type of orientation. 16 B.R. 12 (Apr. 1985).

[145] 7 B.R. 9-10 (Aug. 1983); 15 B.R. 19 (Dec. 1984); 23 B.R. 49, 53-54 (Apr. 1985).

[146] 7 B.R. 9-10 (Aug. 1983).

[147] 22 B.R. 75-76 (Mar. 1984).

[148] Ibid.

The availability of training is impeded by the lack of resources. There are very few training programs at institutions of higher education. There is only one certificate training program that trains interpreters for the deaf, and it has no course devoted to court interpreting.[150] Montclair State College has the only training that approximates a program for training court interpreters. This is provided through two certificate programs, an Hispanic specialization in its paralegal program and a legal track in its Hispanic community affairs curriculum and is limited to interpreting in Spanish and English. Only two institutions offer other courses of any kind in interpretation, one of which focuses on Spanish-English and another on French-English.[151]

There is a major development that must be noted. Montclair State College is sponsoring the University of Arizona's Summer Institute for Court Interpretation on its campus this Summer. This is the first in-depth, intensive program designed explicitly for court interpreters to be held in New Jersey or the northeast and it goes a long way to providing the specialized training court interpreters need. Unfortunately, however, the Institute limits its instruction to interpreting in Spanish and English only.

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[149] Id. at 76.

[150] 2 B.R 7-12 (Nov. 1982).

[151] This information is based on a survey of the bulletins and catalogs of the state's colleges and universities collected during the Summer of 1984.

The educational picture for court interpreters is bleak. There is no fully adequate, ongoing program at any college or university, the resources that do exist are not easily accessible statewide, and the available programs are limited almost exclusively to Spanish and English.

The lack of training has been reported especially by the court interpreters themselves. Many recognize that they deliver inadequate interpreting services. Some 12% of the court interpreters surveyed indicated that the lack of training was a serious problem,[152] a condition reported by many bilingual court support personnel as well.[153] The consultants who interviewed and observed court interpreters and other bilingual personnel used as interpreters emphasized that everyone interviewed requested training to assist them in upgrading their technical skills and for appropriate materials to consult for legal translations.[154] The need for such training has been reported by almost everyone else as well.[155]

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[152] 15 B.R. 26-27 (Dec. 1984).

[153] 16 B.R. 26-27 (Apr. 1985).

[154] 22 B.R. 76 (Mar. 1984).

[155] Judges, 9 B.R. 84,90-91 (Dec. 1983); bilingual attorneys, 10 B.R. 9-10,13, 31 (Apr. 1984); Public Defenders and attorneys with Legal Services, 12 B.R. 9,14,25 (Jun. 1983).

FINDING #5

> There are no comprehensive guidelines which establish policy on the conduct of interpreted court proceedings, determine responsibilities for paying related costs, or provide for the effective administration of court interpreting, legal translating, bilingual and bilingual/multicultural services.

Court Proceedings

The survey of the trial court judges revealed that current practices vary significantly according to geography and type of court. All of the following practices were found to vary significantly according to both of those variables:

> (1) The ways judges respond to requests for interpreters--60% of all judges determine whether a request is bona fide by some means of question-and-answer with petitioner, 18% routinely grant every request with no such examination, 13% rely on third parties to justify supplying an interpreter, and the remaining judges (7%) rely on observation, suggesting that the need was always self-evident.[156]
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> (2) The practice of swearing interpreters. 85% of the judges always swear interpreters, 9% do so very often or often, and 7% administer oaths rarely or never.[157]

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[156] For example, the question-and-answer method is used most in the Municipal Courts (73%), reliance on a third party is used most in the Juvenile and Domestic Relations Courts (26%), and requests are routinely granted most in the District Courts (41%). Speaking geographically, the question-and-answer method is used most by judges in Passaic County (82%), the third-party approach is used most by judges in Ocean County (40%), and requests are routinely granted most in Mercer County (41%). See Tables 21 and 22, 9 B.R. 28-34 (Dec. 1983).

[157] For example, all judges presiding over general equity and matrimonial matters always administer oaths, while only 60% of the judges always do so in Juvenie and Domestic Relations Courts. See Tables 25 and 26, id. at 36-39. In addition, the Task Force learned that several different oaths are used, but did not study the patterns of use according to geography or types of courts.

> (3) The likelihood that instructions are given to interpreters at the outset of a proceeding. 49% of all judges always instruct interpreters before a proceeding, 33% do so very often or often, while 28% do so rarely or never.[158]
>
> (4) The types of interpreters used. The percentage of judges who have used each major type of interpreters is 77% for interpreters provided by parties, 47% for persons obtained randomly from the courtroom, 44% for outside per diems and 21% for full-time, staff court interpreter.[159]
>
> (5) The modes of interpreting that are employed. The simultaneous mode is used before 28% of the state's judges, the consecutive mode has appeared before 85% of the judges, and the summary mode has been observed by 32%.[160]

Two other practices were found to vary widely among the judges--the process of identifying whether an interpreter is placed on the record and how interpreters are provided in a case when more than one defendant needs one.

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158 Judges are most likely to do this if they sit primarily in the following courts, beginning with the most likely: Municipal, Matrimonial, and Civil. As a general rule, judges in counties with more interpreted proceedings are less likely to give such instructions. See Tables 27 and 28, id. at 38-41.

159 Full-time, staff court interpreters are used by more judges in Middlesex County (57%), per diems appear before the largest percentage of judges in Burlington County (67%), and both bystanders and interpreters provided by the party appear before most judges in Union County (63% and 94% respectively). See Tables 39 and 41, id. at 47-54.

160 The variation of the three modes on the geographical variable was found to be statistically significant for only the simultaneous mode. In that instance, for example, the simultaneous mode had been observed most by the judges in Cumberland County (78%). The use of all three modes was statistically significant, however, in terms of the various types of courts. The simultaneous mode had been observed most among the judges presiding over criminal matters (58%), while all District Court judges had seen the consecutive mode and the summary mode had been used most before judges of the Juvenile and Domestic Relations Court (39%). See Tables 59-62, id. at 57-63.

Most (80%) judges place the determination of a need for an interpreter on the record, but the practice varies among types of courts. 89% of the judges in both Municipal and Matrimonial Courts always do so, but only 42% of the judges in the District Courts always do so.[161]

Another practice that varies considerably is the number of interpreters provided to defendants when multiple defendants are on trial. Multiple court interpreters have been provided on a case-by-case basis in seven vicinages, the need has never surfaced in four vicinages, and the remaining four vicinages leave it to defense counsel as the courts do not supply court interpreters for counsel table interpreting. In the last four vicinages, the number of court interpreters is left to defense counsel who are allowed as many as they think they need.[162]

The lack of uniform procedures creates problems for court interpreters, too. They may not know what to expect when they go from one court to the next. Their effectiveness is sometimes reduced when they have to figure out and adjust to different procedures. Some court interpreters viewed the lack of uniformity as "inconsistencies" for which there may be no justification.[163]

It is especially critical to examine in more detail the varying practices in the use of the simultaneous mode in criminal matters in view of its import for due process. Use of the simultaneous mode is the only way to ensure that criminal defendants can truly be present, exercise fully their due process rights and the right to confrontation.[164] While those rights apply primarily in the context of a criminal trial, the simultaneous mode should also be used at certain times during the taking of pleas and at sentencing. However, 42% of the judges presiding over criminal matters have never observed the simultaneous mode in use. Since the simultaneous mode is the only way to fully understand adversarial evidence and to ensure a party's full participation in the adjudication of cases, guaranteeing thereby due process rights, the Task Force finds this mode is seriously underutilized in all courts. The percentage of judges in each type of court who have observed the simultaneous mode in practice is supplied next to each major type of court: Municipal, 20%; District, 16%; Juvenile and Domestic Relations, 39%; Criminal, 58%; Civil, 25%; General, 23%; Matrimonial, 5%.[165]

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[161] The percentages of judges in the other courts are 67% in Juvenile and Domestic Relations, 69% in Civil and General Equity, and 74% in Criminal. Id. at 34-35.

[162] 7 B.R. 61-65 (Aug. 1983).

[163] 15 B.R. 40-41 (Dec. 1984).

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[164] Some judges are acutely aware of the need for simultaneous interpreting and report that they have to keep after interpreters to interpret in this mode when it is appropriate to do so. 9 B.R. 98 (Dec. 1983). A bilingual attorney said that interpreting in the simultaneous mode "is very seldom done." 10 B.R. 23 (Apr. 1984).

Three Hispanic administrators at the Department of Corrections indicated that one of the major themes they hear from the Hispanic inmates they serve is that they did not know what was happening in the courtroom as either no interpreter was made available or the available interpreter did not simultaneously interprete everything that was happening. Interview with Espada and Farrell, supra n. 98, and Interview with Maggie Aguero, Assistant Ombudsman, in Trenton (November 26, 1984). See 23 B.R. 17-20 (Apr. 1985) for notes of both interviews.

The same finding was reported in a 1976 survey of Hispanic prisoners. That study found that 36% of the Hispanic prisoners interviewed claimed they did not understand what was going on when they were in court. Lee, supra n. 98, at 62.

Another effect of leaving all issues of court interpreters to local discretion is that it requires judges to make at least one determination that is outside their expertise. When a request for a court interpreter is made, it is presently left up to the judge to determine in his or her discretion whether the request is bona fide. Most judges make an effort to test defendants' and parties' language abilities. Judges are not trained linguists and, in many if not most instances, are not able to make accurate judgements of linguistic competence. Some judges may be too rigorous in their examinations, others appear to be predisposed against the party, and still others seem to be too accommodating. All are making judgements for which they have no technical or professional training. In some instances, persons who are not entitled to an interpreter receive one, judges often preferring to err on the side of caution. This is not an efficient use of scarce resources. In other cases, some persons with legitimate needs for interpreters are denied them. In the course of questioning a person to determine whether the need for an interpreter is legitimate, the court[166] or counsel[167] may demonstrate ethnic bias or unfairly impugn the motives of the person requesting assistance.

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[165] 9 B.R. 61 (Dec. 1983).

The Task Force also learned that clients often do not fully understand what has just happened when a court proceeding is completed. For example, Hispanic prisoners often present themselves to bilingual employees of the Department of Corrections as not knowing how much time they are doing or what crimes they were charged with or convicted of. These staff often find themselves obligated to explain to prisoners what they should have understood before they arrived.[168]

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[166] One bilingual attorney noted the following: "Judges should not argue with witnesses who bring interpreters as to the witnesses' capacity to understand the English language. If a witness brings an interpreter, I do not believe it is the duty of the court to inquire with respect to the witness' knowledge of the English language. The court should abstain from making remarks such as 'are you going to tell me that you have been living here for 21 years and cannot speak or understand English?' or 'You did not let your interpreter finish translating the question. I think you speak English.'" 10 B.R. 17 (Apr. 1984).

There is no doubt, however, that a minority of persons who request an interpreter, especially in criminal matters, use an alleged language barrier as a weapon in their defense. However, questioning all persons on or off the record raises questions about the credibility of all linguistic minority clients, regardless of their motives. 9 B.R. 95-96 (Dec. 1983). See 6 B.R. 4-5,13 (Jul 1983), 9 B.R. 25-34 (Dec. 1983), 10 B.R. 17,22-23, 29,32,35-36 (Apr. 1984) and 12 B.R. (Jun. 1983). For another view, see 11 B.R. 34 (Jun. 1984).

[167] One bilingual attorney reported, for example, "As a matter of fact, in one Municipal Court matter, the prosecutor alleged on the record that my client might be committing perjury in stating that she did not speak English well enough to do without an interpreter." 10 B.R. 22 (Apr. 1984).

[168] Interviews with Aguero, supra, n. 164, and Espada and Farrell, supra n. 98.

It has been reported that some Municipal Courts dismiss cases against pro se complainants unless they bring their own interpreter.[169] Cases have been dismissed for non-appearance when the linguistic minority plaintiffs have been physically present. Not knowing they needed to respond at the calendar call process, they remained silent and implied thereby their absence.[170] Some persons interviewed claim that judges sometimes proceed without an interpreter when one should have been present.[171]

The management of a courtroom proceeding where the interpreters's role is critical is difficult, especially in the absence of sepcific guidelines. Sometimes the interpreter is the person addressed rather than the witness,[172] judges and attorneys speak too fast (especially when reading from a text),[173] decorum is not maintained (e.g., two or more persons speak simultaneously or the courtroom is generally noisy),[174] interpreters can be manipulated by attorneys (especially if the attorney speaks the language of the client),[175] be expected to persuade defendants to accept a plea bargain,[176] and be expected to perform tasks that are outside of their responsibility.[177] Since cases where an interpreter is used can require more time than an ordinary case, judges or opposing counsel will sometimes limit testimony to the detriment of the parties.[178]

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[169] 10 B.R. 10 (Apr. 1984). There was also one report of a judge who held a litigant in contempt for not having brought an interpreter. 16 B.R. 38 (Apr. 1985). See 9 B.R. 94-95 (Dec. 1983) for related examples.

[170] 22 B.R. 82-83 (Mar. 1984). Rodriguez, *supra* n. 26, at 37-38, described the following scenario. A non-English-speaking defendant comes to Municipal Court and finds his way to the correct courtroom. When the roll is called, the clerk advises everyone to simply answer when their name is called, but to remain seated. The defendant does not understand this direction, so when his name is called, he dutifully gets up and walks politely before the bench. Security officers take him back to his seat.

"When the name of the defendant that was asked to remain seated is again called, he recalls what happened to him when he was called the first time, so this time he does not stand. Unless the officers that directed him to sit down or some other person in the Courtroom remembered his name from the initial call, he will remain seated for fear of another rebuff. Within a couple of seconds, the Judge will issue a bench warrant even though the defendant is sitting in the Courtroom when his name is called."

[171] 22 B.R. 67 (Mar. 1984).

[172] *E.g.*, some judges speak to the interpreter, saying things like, "Tell him...," "Ask him...," treating the client as a third party to the conversation instead of addressing the client in the second person. *Ibid*.

These variations lead the Task Force to conclude that the kind of response to the intepreting needs of the average non-English-speaking litigant will receive in the courts is unpredictable, inconsistent and widely divergent in a number of critical respects. Although there are some respects in which most courts can be said to function similarly or identically, the absence of policy basically leaves each judge to determine how to handle most aspects of interpreted proceedings on an ad hoc basis or on the basis of personal style or philosophy.

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[173] Ibid.

[174] It is impossible to simultaneously interpret everything two or more persons are saying if they are talking at the same time. Further, something that cannot be heard cannot be interpreted. Id. at 68.

[175] 15 B.R. 28-29 (Dec. 1984) and 22 B.R. 69 (Mar. 1984).

[176] 16 B.R. 30 (Apr. 1985).

[177] For example, one court clerk is reported to have asked the interpreter to swear in a witness, not interpret the clerk's swearing in of the witness. 15 B.R. 28-32 (Dec. 1984).

[178] 10 B.R. (Apr. 1984) and 16 B.R. 35 (Apr. 1985).

Responsibilities for Paying for Interpreting Services

Existing policy statements do not provide sufficient guidance in terms of who is to pay for the services of a court interpreter. The basic statement of policy in force at this time is this:

> Interpreters may be provided from a county list of interpreters in civil cases but at the expense of the party using them when they are not salaried. In criminal cases the county is to bear the expense of the interpreters. An interpreter should be provided for the complete trial of a defendant who does not speak English.[179]
>
> The Board of Freeholders must provide for the necessary court interpreters, either by salaried interpreters or by per diems, depending upon the needs as set out by the court.[180]

However, these summaries of meetings between the Chief Justice and the Assignment Judges have recently become quite controversial. These summaries held that the counties are to bear the expenses of court interpreters used in criminal cases, including interpreting services rendered at counsel table for criminal defendants. Their authority is disputed. A case was heard in Essex County where the court held that the summaries do not enjoy the status of directives and accordingly are only suggestions, "summaries" of what was concluded and not binding policy.[181] However, some counties have viewed these summaries as directives and the practice to be followed is now in dispute.[182] Some other county governments are anxious to divest themselves of the burden of paying for these services.

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[179] Summary of Chief Justice/Assignment Judges Meeting on May 21, 1971. COMPILATION OF ADMINISTRATIVE DIRECTIVES 123.

[180] Summary of the Chief Justice/Assignment Judges administrative meeting (June 15, 1972), ibid.

The summaries provide no guidance for other matters except civil cases. It is clear that where there are staff court interpreters, they may be used in civil matters, but where there are none, parties must pay for all services. However, the prevailing practice is that even full-time, official court interpreters are rarely if ever used in civil matters regardless of availability. In addition, no guidance has been given the Municipal Courts as to when they are obligated to pay for a court interpreter or which clients have a right to such service at the cost of the court.[183]

Payment practices are therefore imprecise or irregular and there appears to be a long-standing reluctance to pay for court interpreting services. Budgetary constraints may result in decisions not to allow an interpreter or to find a bilingual employee who is then placed in the awkward position of "interpreting" without adequate training or additional compensation. Reliance on volunteers as much as possible is a common and dangerous practice. Even attorneys for the opposing side may be asked to interpret.[184] These are understandably thorny issues because they involve money.[185]

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[181] State v. Linares, 192 N.J. Super. 391,397-398 (Law Div. 1983).

[182] See 23 B.R. 3-11 (Apr. 1985) for a staff essay that evaluates the opinion.

[183] It should be noted that, as described infra at pp. 161-162, the Legislature has made it clear that when interpreters for deaf persons are involved, they are to be paid in all circumstances by the courts in which they appear.

Other examples of diversity follow: The practice of paying for court interpreters in one county is unique. It pays for the court interpreter in any of its courts when the judge orders the Trial Court Administrator to do so and when the client is indigent. In the remaining vicinages, however, (1) litigants are expected to pay in civil matters (but two counties provide court interpreters under certain circumstances), (2) clients are expected to pay for their own interpreter in the District Courts of seven vicinages while the courts pay in seven and the other vicinage does so only for some parties, (3) the courts pay for interpreters for taking testimony (except in Essex County, where the Sheriff provides the interpreter and in Cumberland County, where the prosecutor supplies the interpreter) in criminal matters, while the situation is quite complex for counsel table interpreters: 5 vicinages always supply this interpreter, 5 vicinages never do, 3 vicinages do so only for indigent clients, one does whatever the court orders and the last pays for the interpreter if so required by a judge, otherwise the Public Defender pays or the party pays if represented by retained counsel; (4) almost every conceivable combination of possibilities occurs in the Municipal Courts, and the courts pay for interpreters serving in the Juvenile and Domestic Relations

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[184] 10 B.R. 18 (Apr. 1984).

[185] The responsibility for paying the costs of court interpreting services is an issue that is consistently problematic over time. For a discussion of some of the thorns in the history of related legislation, see 4 B.R. 16 (May 1983).

Courts (except in Morris County where this is done only if the clients are indigent).[186] In spite of these reports of what general practice is, the Task Force has learned that some courts, especially many Municipal and District Courts, routinely expect the clients to bring their own interpreter.[187] In addition, of the twenty Municipal Courts with the highest volumes of interpreted proceedings, only two have full- or part-time official court interpreters, thirteen rely on bilingual support personnel, and eight have money for some per diems. Three of them, including one with a very high number of interpreted proceedings, do not spend money in any of these three ways.[188]

Administrative Issues

Noticing Procedures

There is no uniform method for advising the courts of a need for a court interpreter. Some counties do have such formal procedures. In criminal matters, Hudson, Middlesex and Passaic Counties require all requests for court interpreters be made through the Trial Court Administrator, while Middlesex County expects the notice to be made through the Criminal Assignment Clerk. In Essex requests for court interpreters go directly to the Sheriff's office. In Passaic County, if the request is for a court interpreter for a language other than Spanish, Passaic County requires that the request be made at least 24 hours prior to the proceeding.[189] In Civil matters, Hudson, Middlesex and

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[186] 7 B.R. 25-27,65-67 (Aug. 1983).

[187] Id. at 26.

[188] 23 B.R. 22-23 (Apr. 1985).

[189] 7 B.R. 33-34,57-59 (Aug. 1983).

Passaic counties do not provide court interpreters, so there is no need for notice.[190]

Several respondents expressed concern on this subject. Court interpreters themselves, both per diem and staff, complained about the lack of advance warning. Some claimed that courts wait until the last possible moment before calling for an interpreter.[191] This was also a major concern of the Trial Court Administrators.[192]

Trial court judges were asked to identify and rank the three means by which the need for an interpreter was brought to their attention. Their answers show that most judges do not know in advance of the need for an interpreter: 62% of all judges, by the court's own motion; 49%, by a pro se litigant; 41%, by defense counsel; 31%, by the prosecutor; 29%, by the witness and 29% by counsel in non-criminal matters. There is also significant variation between procedures at the county and municipal level. For example, judges sitting primarily in criminal matters are advised most by defense counsel (98%), the prosecutor (75%) or the court's own motion (60%). However, judges in the Municipal Courts tend to learn of the need for a court interpreter first on their own motion (84%), second from a pro se litigant (72%), and third by defense counsel (35%). The data supplied by the judges indicate that judges in the limited jurisdiction courts are more likely to have no advance warning when compared to judges in the Superior Court, who are more likely to have been advised by counsel.[193]

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[190] This is generally the practice in other counties as well, but the Task Force found no written policy on the subject. Id. at 34,58-59.

[191] 15 B.R. 37 (Dec. 1984).

[192] 7 B.R. 3 (Aug. 1983).

Assigning Court Interpreters

There is some state judicial policy with respect to the allocation of court interpreting resources. Staff court interpreters may be provided in civil matters and must be provided for the complete trial of a defendant who does not speak English.[194] At the county level, policies vary. For example, the Assignment Judge in one county has implemented verbally a policy that the court interpreters in the Sheriff's office shall be used first in criminal matters and, as time allows, in the Juvenile and Domestic Relations Courts and the District Court.[195] Another Assignment Judge has issued a written policy that per diem interpreters are to be used in criminal matters only when the service of an interpreter is likely to be needed for over one hour. Otherwise, such service is to be rendered by bilingual court support personnel.[196] Policy in two other counties holds that staff court interpreters will be assigned on the basis of their availability. However, if there is justification for sending a particular staff court interpreter, e.g., continuing with the same case, an exception can be made.[197] A fourth county requires staff court interpreters to return to their office if they have not been used within five minutes of having assignments until the court in which they are serving at the end of the day adjourns.[198] This is a concern in several counties as interpreters can lose a lot of time waiting for a case to be called. In the case of per diems, the meter is running and in the case of the staff interpreter, calls for service elsewhere may not be heeded in a timely fashion.[199] No written or verbal policy was found in the other counties.

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[193] In civil and matrimonial matters, judges learn of the need first from the parties' counsel (84% and 80% respectively). While District Court judges are apprised most by pro se litigants (76%), judges in the Juvenile and Domestic Relations Courts rely primarily on their own motion (81%). See 9 B.R. 44-47 (Dec. 1983) for a complete discussion of the means of noticing in all of the courts.

[194] COMPILATION OF ADMINISTRATIVE DIRECTIVES 123 (Summary of CJ/AJ Meeting, May 21, 1971).

[195] Essex County, 7 B.R. 33 (Aug. 1983).

[196] Camden County, id. at 33-34.

The actual practices of assigning interpreters vary among the counties. Most Trial Court Administrators receive requests for locating court interpreters in most parts of the county courts and the Superior Court as well as probation departments, but they are not asked much for such assistance from the Municipal Courts.[200] Many of the Trial Court Administrators have prepared their own list of per diem interpreters upon whom they can call, and these lists are sometimes supplied to attorneys as well as circulated among the administrators.[201] However, the task of locating and securing a court interpreter is sometimes performed by a judge's secretary, the prosecutor or the Sheriff. One county reported that judges in the District Court sometimes rely on members of the public who happen to be sitting in the courtroom.[202]

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[197] Hudson and Passaic Counties, id. at 59,34, respectively.

[198] Hudson County, ibid.

[199] 7 B.R. 5 (Aug. 1983).

[200] Id. at 21-22.

Availability of Court Interpreters

All available data suggest that most of the state's courts make some effort to provide an interpreter and almost all permit the assistance of a court interpreter. However, several judges have reported that there are not sufficient numbers of interpreters to meet the needs of some courts.[203] This has also been confirmed by the Trial Court Administrators,[204] the court interpreters themselves,[205] bilingual court support personnel,[206] deaf persons who had been to court,[207] and bilingual attorneys.[208] Further, even though deaf and hearing impaired persons enjoy more defined, extensive rights to court interpreters, the Division of the Deaf reports that they do not have a sufficient pool of certified interpreters to draw on to meet the growing needs of the courts in a timely fashion. This, the Division has reported, has resulted in at least two postponements per month.[209]

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[201] Id. at 9.

[202] Id. at 22-24.

[203] 9 B.R. 91 (Dec. 1983).

[204] For example, one county reported that it was able to supply a staff intepreter in a timely fashion only one-half of the time. 7 B.R. 4 (Aug. 1983).

[205] 15 B.R. 35 (Dec. 1984).

[206] 16 B.R. 29 (Apr. 1985).

[207] 18 B.R. 11-13 (Dec. 1984).

[208] 10 B.R. 30 (Apr. 1984). One bilingual attorney noted, "Interpreters supplied by the court sometimes did not show up at trial." Id. at 5.

Interpreters are not supplied at all for hearings outside of court such as meetings of the JCC's.[210] The two types of persons used most often to interpret in the JCC's are bilingual members of the JCC's and the juvenile defendants themselves.[211]

While court interpreters may be generally available, they are often not supplied when they are needed. One in five judges has reported that inordinate case processing delays are caused by the unavailability of an acceptable interpreter. This was reported to be a problem especially by judges who preside over courts with large numbers of interpreted proceedings.[212] Some of them referred to the availibility of court interpreters as a "constant uncertainty" or "less than satisfactory."[213] In addition, the Trial Court Administrators reported that one of their major frustrations is the frequent inability to provide an interpreter in a timely fashion. This inability can be attributed to two major causes: lack of sufficient staff or outside resources or receiving a request on short notice. Some days staff interpreters are overwhelmed and cannot meet the demand, while at other times they sit idle. One administrator in a county with a high volume of interpreted proceedings indicated that requests for interpreters can be met on a timely basis only about half of the time.[214] The problem of untimely arrival of court interpreters has also been noted by bilingual attorneys,[215] Public Defenders and various offices of Legal Services.[216] Some prosecutors as well as Public Defenders commented that there is no problem in jury trials, but there are major problems with court appearances such as arraignments and bail hearings.[217]

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[209] Interview with Richard Herring, Director, and Rita Jo Scarcella, Coordinator, Interpreter Referral Service, Division of the Deaf, New Jersey Department of Labor, in Trenton (Jan. 14, 1985).

[210] 23 B.R. 55,61-63 (Apr. 1985). Dispute resolution programs may also be included in this category. See, *e.g.*, J.A. Caporrino and J.R. Mayo, Jr., THE FAMILY NEIGHBORHOOD DISPUTE PROGRAM: AN OVERVIEW 8 (Jan. 1976).

[211] 16 B.R. 55,58-62 (Apr. 1985).

[212] One judge wrote, "In our jurisdiction the lack of sufficient interpreters is a source of concern since it often inhibits the steady flow of court business." 9 B.R. 91 (Dec. 1983). See also, *id*. at 72-76,92.

The availability of interpreters varies widely from county to county. For example, in some counties, the courts routinely provide interpreters in most or all matters. In other counties, however, some courts provide interpreters while some do not, and in still other counties, virtually no courts provide interpreters.[218] A survey of the Trial Court Administrators found the following practices in terms of whether and how a court interpreter is provided for criminal defendants at counsel table: 5 vicinages always supply such an interpreter, 5 vicinages never supply such an interpreter and expect defense counsel to do so, 3 vicinages supply such an interpreter for indigent defendants but not for defendants who retain their own counsel, and the other two vicinages basically leave it up to the judge and parties to work it out.[219] In some instances these practices are the result of written policy while in others, "tradition" governs other situations.

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[213] Id. at 91.

[214] 7 B.R. 4 (Aug. 1983).

[215] One bilingual attorney noted, for example, "It is not unusual to wait 30 minutes for one to arrive after a call from the judge." 10 B.R. 3 (Apr. 1984).

[216] 12 B.R. 2-4 (Jun. 1983).

[217] 11 B.R. 7,25 (Jun. 1984); 12 B.R. 3 (Jun. 1983).

The availability of court interpreters depends largely on the language for which an interpreter is needed. Since Spanish is the major language after English, many courts are likely to have a Spanish-speaking employee who is used to interpret. Those courts tend to make such employees available regardless of the employee's qualifications or the type of matter that is being heard. Some courts make an effort to hire and maintain employees who speak other languages that are represented in the communities served by those courts. However, when a client needs an interpreter for a relatively uncommon language, that client is typically obliged to provide his or her own interpreter. This has been reported by some bilingual attorneys,[220] prosecutors,[221] attorneys with Legal Services,[222] and the Task Force's consultants.[223] Sometimes this results in the dangerous practice of using someone who speaks a language that is in the family of languages of the language spoken by the client, but is not the client's language. For example, sometimes Italian and Spanish, Portuguese and Spanish, and Russian and Polish are viewed to be interchangeable.[224]

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[218] 7 B.R. 25-27 (Aug. 1983). This has also been noted by some bilingual attorneys. 10 B.R. 4-5 (Apr. 1984).

[219] 7 B.R. 65-67 (Aug. 1983).

Recruitment

There is presently no statewide pool of qualified court interpreters from which court administrators may employ full-time, part-time or per diem court interpreters. In addition, there is no assurance that the people hired or relied on for per diem services are qualified. Only one county uses a screening mechanism which comes close to evaluating actual interpreting skills, only a few places even screen for language skills, interviews of candidates are usually conducted only in English, and many court administrators assume that the fact that a person is or appears to be bilingual is sufficient qualification for being hired. The haphazard methods of recruiting and hiring new court interpreters sometimes result in hiring unqualified persons.[225]

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[220] 10 B.R. 6 (Apr. 1984).

[221] 11 B.R. 6-7 (Jun. 1984).

[222] 12 B.R. 13 Jun. 1983).

[223] 22 B.R. 80 (Mar. 1984).

[224] 10 B.R. 9 (Apr. 1984) and 22 B.R. 64-66 (Mar. 1984).

[225] Id. at 6-9 and 22 B.R. 71 (Mar. 1984).

Job Titles and Court Interpreting

The Task Force learned that the titles used for staff court interpreters are not uniform, there is widespread use of persons to perform services that are outside of their title, and most staff court interpreters do not have opportunities to advance up a career ladder. There are five different titles in use in the Superior Courts and two different titles in the Municipal Courts.[226]

Further, staff court interpreters are often required to perform clerical and other tasks unrelated to their profession and persons who are not staff court interpreters are likewise asked to work outside of their title--i.e., to interpret. There are several problems with using court interpreters for clerical and other tasks. First, it may sometimes reflects a general attitude that interpreting is a clerical, not a professional level of skill. Even if this attitude is not present, the effect is the same--the clericalization of court interpreting.[227] Second, it is often experienced as demeaning by the staff, some of whom have reported to the Task Force that they feel more like "Girl/boy Friday." Third, it may inhibit administrators insofar as it creates friction between different agencies, leads to a morale problem for persons used, results in work getting backlogged and poses the threat of labor-management confrontation.[228] The obligation to perform such a variety of duties can result in being accountable to multiple supervisors, having conflicting goals and timetables, and lead to being overworked. The net effect is that morale is often damaged and the quality of court interpreting suffers.

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[226] 7 B.R. 10-13 (Aug. 1983) and data obtained for but not included in 23 B.R. 21-23 (Apr. 1985). It is also interesting to note that public employees who are relied on to interpret but are not official court interpreters in the title of court interpreter have been found to be working in 67 different titles, ranging from clerical to professional titles. 15 B.R. 15-16 (Dec. 1984).

[227] 15 B.R. 29 (Dec. 1984). See 21 B.R. (Jan. 1984) for the position that court interpreters must be treated as professionals, not clericals.

Many other employees are called to work out of title, too. The Task Force found that almost half (45%) of all bilingual court support personnel have been called on to interpret in court or for an attorney.[229] About one-fourth of them had been hired with the understanding that they would also interpret, and while the largest group (42%) felt they should not have to interpret, over two-thirds indicated they were happy to help out. Aside from the likelihood that such persons are unqualified to interpret, the major problem reported to the Task Force is that this interferes with such persons' normal responsibilities. Slightly more than half (55%) of the bilingual court support personnel indicated that their normal duties were interfered with some and another 15% found a substantial interference.[230] Some bilingual court support personnel who work in clerical or paraprofessional titles are especially resentful because this represents being used to perform professional duties at clerical or paraprofessional wages.

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[228] Memorandum to Robert Joe Lee from J. Edward Paglione, Chief Probation Officer of the Burlington County Probation Department (Feb. 28, 1983).

[229] 16 B.R. 16 (Apr. 1985).

[230] 31% had no feelings about whether they should have to interpret. 16 B.R. 17-19 (Apr. 1985).

Supervision of Court Interpreters

Supervision will be discussed in terms of the initial and ongoing evaluation of the professional performance of court interpreters. The typical foundation for such evaluations is a job description.

There is a general, vague and outdated description of the court interpreting title issued by the Department of Civil Service, but it is too inadequate to serve as a framework for evaluating such staff. Aside from this document, there is no official description of the responsibilities of staff court interpreters at any level--state, vicinage or county.[231] Accordingly there are no written guidelines available for the purposes of evaluation. Nor is there any statewide standard for evaluation or against which court interpreters can be evaluated. The little supervision that occurs is strictly local. What passes as evaluation locally is limited to a few counties, is subjective, is limited to issues such as attendance instead of professional performance, and tends to be performed on an ad hoc basis. Only one county uses a head interpreter to supervise other staff interpreters and no county has an ongoing evaluation of any kind of per diem court interpreters that serve locally.[232] Staff and per diem court interpreters are assumed to be performing acceptably unless complaints are made against them.[233]

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231 3 B.R. 15-18 (Dec. 1982) and 7 B.R. 24 (Aug. 1983).

232 7 B.R. 10,24-25 (Aug. 1983).

233 *Ibid*. at 10.

The absence of professional supervision was noted by court interpreters. The Task Force's consultants found that not a single court interpreter they interviewed felt they received job-relevant, professional evaluation. Instead, they found that evaluations tend to be based on personality rather than performance. Further, they discovered that in some instances employers are very fond of their employees who interpret and believe they are "really good." The consultants found some of these "good interpreters" to be among the worst.

Rates of Compensation for Court Interpreters

There is no statewide policy that fixes the salaries of full-time court interpreters or the per diem or hourly fees of free-lance interpreters. The result is significant variation in the amount of compensation made to both types of interpreters. Salaries for full-time court interpreters in all courts range from $9,500 to $17,131, and they average $11,851.[234] The bottom of the range is a county salary, not a Municipal Court salary.[235]

The ranges of rates paid to per diems also vary tremendously. Courts that have fixed rates for per diem services pay as little as $50 for a day and as much as $75 per day. Their hourly rates range from $10 to $15 per hour.[236] Free-lance interpreters have reported receiving as little as $5 per hour and as much as $50 per hour, and the daily rates they report having been paid are from $20 to $250. The average hourly rate they reported is $20 and the average per diem rate is $76.[237]

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[234] Id. at 12 and 15 B.R. 16 (Dec. 1984).

[235] This is not cited in a background report, but is included in the data submitted by the Municipal Courts and the Trial Court Administrators for 7 B.R. (Aug. 1983) and 23 B.R. 21-23 (Apr. 1985).

[236] 7 B.R. 15-17 (Aug. 1983).

The Task Force urges that the variation in the rates is not rational and notes that all rates are significantly less than the going rates for such services and are inadequate.[238] For example, the starting salary of full-time, court interpreters in the Court of Common Pleas (Philadelphia) is $18,500 and the hourly rate is $35.[239] The starting salary in the Supreme Court of New York is $18,808 and the authorized per diem rate is $62.39.[240] The Administrative Office of the United States Courts starts newly hired staff court interpreters at $22,307 while certified court interpreters are paid $175 per diem and uncertified court interpreters are paid $85 per diem.[241] Considerable dissatisfaction has been reported by staff and free-lance court interpreters alike with existing rates of compensation.[242]

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[237] 15 B.R. 16-17 (Dec. 1984). Two judges also expressed dissatisfaction with the lack of uniform rates for per diems. 9 B.R. 92 (Dec. 1983).

[238] This was noted by attorneys with Legal Services, too. 12 B.R. 19 (Jun. 1983).

[239] Telephone interview with Maria J. Vazquez, Supervisor of the Interpreters (April 13, 1984).

[240] Letter to Robert Joe Lee from Anthony R. Amarante, Chief Court Interpreter, Supreme Court of New York, Brooklyn (April 24, 1984). It should be noted that the New York Society for the Deaf finds the per diem rate unacceptable and pays interpreters for the deaf the difference between the Society's rate and the $62.39. The Society charges $45 for the first two hours and $16 for each additional hour. Telephone interview with Cathleen Lagalante (May 9, 1984). By contrast, the the California Registry of Interpreters for the Deaf charges $200 per diem and Greater Philadelphia Registry of Interpreters for the Deaf is revising its rates and expects to also charge $200 per diem. Telephone interviews with Betty Ingram (Apr. 27, 1984) and Deborah Flick (Apr. 27, 1984), respectively.

[241] Telephone interview with Jon Leeth, Director of the Office of Court Reporting and Interpreting Services (Oct. 18, 1983). Memorandum to Judges, Magistrates, Public/Community Defenders, Executives and Clerks

Rates of Compensation for Bilingual Support Personnel

The Task Force finds that the additional skills required of bilingual court support personnel are not compensated. For example, the person who is hired as a Probation Officer--Bilingual starts at the same salary as the non-bilingual Probation Officer. However, in addition to presenting competence in certain professional skills related to the profession of probation, the person who seeks to work in the bilingual variant to the title must also demonstrate competence in Spanish and English. The additional skill is not compensated.

Three-fourths of all bilingual probation personnel believe the additional skill should result in additional compensation. Almost half of them (43%) feel strongly that such skills should be compensated. One of them commented, "Such pay should also be in two or more gradients according to the ability. U.S. military, foreign, and intelligence services have a 'pro-pay' (proficiency pay) awarded to individuals who qualify by standard tests."[243]

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of the United States Courts from William E. Foley, Director (Dec. 28, 1982). It was learned in a subsequent conversation with Mr. Leeth that the starting salary for newly hired staff court interpreters would soon be elevated to $25,489. Telephone interview with Jon Leeth (Dec. 6, 1984). See 21 B.R. 23-26 (Jan. 1984) for additional data on rates of compensation.

[242] 15 B.R. 23-24 (Dec. 1984).

[243] 16 B.R. 21-22 (Apr. 1985).

Procedures for Paying Per Diem Court Interpreters

There are two sets of concerns here: variance in procedures and tardiness in making payment. There are several ways these practices vary. First, some vicinages reimburse these interpreters for mileage, while approximately half of them do not. Second, those that do reimburse do so differentially based on a number of different criteria. Third, the rates at which the counties reimburse for mileage range from 17¢ per mile to 25¢ per mile. Finally, only one county is known to also compensate the costs of parking and tolls.[244]

The other concern has been reported by several court interpreters. They find that some courts are very slow to pay for services rendered. Delays of up to six months have been reported.[245]

Statistics

Statistics on the number of proceedings for which interpreters have been used are not available on a statewide or countywide basis. The interpreters serving in the office of the Essex County Sheriff are the only persons who collect and report aggregate statistics. They submit a monthly report to the Sheriff that includes the number of interpreting assignments they perform.

There is some record-keeping of related matters in some counties. For example, the staff interpreters in Hudson and Passaic Counties keep logs of their assignments from which some statistics could be generated, but the logs are used primarily to keep track of the whereabouts of personnel and do not generate statistical reports. Union County maintains a record of all per diem interpreters they use and identify several helpful variables such as amount spent, language involved and time of service. Again, however, no summary statistics are generated.[246]

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[244] 7 B.R. 16-18 (Aug. 1983).

[245] 15 B.R. 25 (Dec. 1984) and Interview with Rita Jo Scarcella, Coordinator, Interpreter Referral Service, New Jersey Division of the Deaf in Trenton (Jan. 14, 1985).

Budget

The counties have dissimilar approaches to preparing budgets for court interpreting services. Accordingly, it is not possible to directly compare costs across the counties or arrive at an exact figure of the total costs incurred. Most counties do not have specific line items for court interpreting and some counties rely primarily on staff interpreters. Still others rely on other bilingual personnel, volunteers, or per diems. Many of the actual costs are therefore hidden. With the exception of Hudson, Passaic and Union Counties, the counties have virtually no means of projecting costs for court interpreting services.

Court administrators are especially concerned about this area for two reasons. First, in some instances counties and municipalities are not willing to appropriate funds. Second, work load and expenditures tend to fluctuate and are hard to predict in some instances.[247]

Consequences

Court interpreters are not efficiently utilized, proceedings are not supplied with interpreters in a timely fashion, costs are unnecessarily incurred, and payments are not always made to free-lance interpreters within a reasonable period of time. The lack of uniformity results in radically different salaries for court interpreters, depending on the county or type of court.

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[246] 7 B.R. 19-20 (Aug. 1983).

[247] Id. at 3-4.

The rights of linguistic minority clients are less likely to be protected when court interpreters with undemonstrated credentials are hired, are never evaluated or supervised meaningfully, and are paid wages incommensurate to the degree of skill they are supposed to have. Bilingual support personnel whose additional skills enjoy no compensation are less motivated to make those skills available to the offices they serve. These are hardly working conditions conducive to excellence and work to the detriment of the clients.

Inability to articulate consistently when an interpreter will be available in each of the twenty-one counties raises the issue of compliance with the constitutional standard of equal protection. Whether or not an interpreter will be available can depend on one or more of the following factors: the type of matter that is being heard (e.g., criminal or civil, traffic or landlord/tenant), the county or municipality in which the court is located, the language spoken by the client who needs an interpreter, and policy promulgated locally. None of these should be viewed as acceptable reasons for such varied availability.

Sometimes the unavailability of an interpreter results in defense counsel's serving as interpreter. This obviously inhibits an attorney's ability to represent a client effectively and interferes with the right to counsel.[248] In addition, the rhythm of a trial is often upended--trains of thought are interrupted, lines of questioning must be reestablished, etc.[249]

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[248] 10 B.R. 5,14,18 (Apr. 1984).

[249] 11 B.R. 35 (Jun. 1984).

FINDING #6

A statutory basis for providing adequate court interpreting services exists for the deaf and hearing impaired but not for other linguistic minorities.

On January 17, 1984, Governor Kean signed An Act Providing for Interpreters for the Hearing Impaired in Official Proceedings.[250] There are nine major features of this act which affect the Judiciary:

1. The court is required to appoint a "qualified interpreter" to assist any hearing impaired person who is a witness or party as a complainant, defendant, or as hearing impaired parents of a juvenile throughout all proceedings before any court (including motor vehicle cases appearing in Municipal Courts) and in preparation with counsel during those proceedings.
2. An interpreter is deemed a "qualified interpreter" only if she or he has been certified by the National Registry of Interpreters for the Deaf, Inc., and listed by the State Division of the Deaf in the Department of Labor or the New Jersey Registry of Interpreters for the Deaf.
3. Proceedings may not commence "until the appointed interpreter is in full view of and spatially situated to assure proper communication with the hearing impaired person involved as a participant."
4. Every interpreter must be sworn in before beginning to interpret. The Act calls for an oath "that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of the person in the English language to the best of his skill and judgment."
5. Every qualified interpreter appointed under the Act shall receive a reasonable fee for the services rendered, together with actual expenses for travel and waiting time.
6. The Supreme Court is directed to establish rules governing the method for paying such interpreters.

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[250] Act of Jan. 17, 1984, ch. 564, 1983 N.J. LAWS 3179. The act is codified at N.J.S.A. 34:1-69.7 *et seq*. It repeals and replaces *L*. 1971, *c*. 230, N.J.S.A. 2A:11-28.1, which had provided a right to a qualified court interpreter for deaf and hearing persons.

7. The Supreme Court is directed to fix the amount of the fees to be paid.
8. All fees are to be paid by the courts themselves.
9. A hearing impaired person may waive the right to such an interpreter only if he or she makes a written request for a waiver and both the judge and the hearing impaired person's counsel approve the request.

By contrast, the statutes on court interpreting in all other languages, which are codified at N.J.S.A. 2A:11:28 et seq., authorize the appointment of interpreters by judges, circumscribe the places at which interpreters may serve, and provide that court interpreters in counties of the first class are to be employed by the Sheriff instead of the courts. These statutes are insufficient and, in some respects, outdated.[251] They do not provide guidance, as does the Act that provides for interpreters for the deaf, in the following critical areas:

1. Who has a right to a court interpreter?
2. In what courts and in what types of cases is there a right to a court interpreter?
3. What qualifications must a court interpreter present before being allowed to interpret?
4. Who pays for the services of a court interpreter in each of the various possible contexts?
5. Should court interpreters be sworn prior to serving?
6. Under what circumstances may the right to an interpreter be waived?

These statutes on court interpreting are inadequate. Only three substantive changes have been made since the first law was passed in 1889.[252] These

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251 The only other statutes that deal with court interpreters are N.J.S.A. 43:10-93 et seq. They deal with pensions for full-time court interpreters.

252 See 4 B.R. (May 1983) for a complete review of all New Jersey statutes passed on matters of court interpreting. The first act was L. 1889, c. 206.

include: (1) L. 1947, c. 344, which required that salaries of court interpreters fixed by the judges be approved by boards of chosen freeholders before they could be effective, whereas judges had complete control over all aspects of fixing salaries before; (2) L. 1949, c. 134 transferred all powers of appointing staff court interpreters from judges to the sheriff in counties of the first class; and (3) L. 1971, c. 230 assured a right to a qualified interpreter for deaf persons and provided that such interpreters "shall serve at the expense of a party, the parties or at public expense as the judge shall order." For the first time, a right to an interpreter was established for one group of linguistic minorities and there was some guidance as to who should pay for the services of such interpreters. Further, since some Sheriffs have limited statutory responsibilities in this area, court interpreters appear in uniform in court proceedings. This less-than-subtle emphasis on law enforcement in a court proceeding is inappropriate.

The statutory scheme has several shortcomings. First of all, it does not reflect critical rights since established in case law. The statutes are outmoded since they have not been revised in view of growing awareness of the intricacies and importance of the process of court interpreting or the related qualifications necessary for adequate court interpretation. For example, the constitutions of two states, California and New Mexico, provide guarantees for court interpreters in criminal matters.[253] In addition, the United States Congress has passed the Court Interpreters Act of 1978.[254] Among other things, the act sets the nation's standard for certification of court interpreters, requires that judges use the services of "the most available certified interpreter...or the services of an otherwise competent interpreter" in all criminal and civil actions initiated by the United States, provides standards for determining the levels of English proficiency at which interpreters must be supplied, sets up standards for waiver of the rights, and requires the United States to pay for all interpreters required under the act.[255]

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[253] CAL CONST. art. I, §14 and N.M. CONST. art. II, §14.

[254] Pub. L. No. 95-539, 92 Stat. 2040, codified at 28 U.S.C. §§1827,1828.

The need for comprehensive legislation in this area is especially critical in view of the growing numbers of linguistic minorities in the state. For every case where an interpreter for the deaf is required there are 200 cases involving foreign language interpreters. Further, while 88% of the state's judges have presided over cases where a foreign language intepreter was needed, only 26% have presided over cases with an interpreter for the deaf.[256] Finally, the requirement that full-time court interpreters be assigned to an agency outside of the Judiciary, the Sheriff, and for only a certain class of counties, is inconsistent with recent strides forward in unifying the administrative structure of the courts. Court interpreting is an integral service of the day-to-day administration of the courts' calendars, a function that the Task Force believes to be the province of the Assignment Judge and the Trial Court Administrator.

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255 See M.R. Frankenthaler and H.L. McCarter, "A Call for Legislative Action: The Case for a New Jersey Court Interpreters Act," 3 SETON HALL LEG. J. 125 (1978) and A. Pousada, "Interpreting for Language Minorities in the Courts," in LANGUAGE IN PUBLIC LIFE 186 (J.E. Alatis and G.R. Tucker eds. Georgetown University Round Table on Languages and Linguistics 1979) for more extensive discussion and evaluation of the Federal act.

256 9 B.R. 8-9,22-23 (Dec. 1983).

FINDING #7

> It is frequently perceived that some court personnel, attorneys and other persons engaged in delivering judicial or legal services to linguistic minorities are not sufficiently sensitive to the importance and complexities of communicating with and delivering effective services to persons of diverse linguistic and cultural backgrounds.

When the court interpreters surveyed by the Task Force were asked to identify the major concern in the general area of interpreting and translating, the issue of the lack of sensitivity of professionals and others in the legal system to the plight of the linguistic minority client was the predominant response. The lack of awareness of judicial employees was also identified as a critical problem by deaf and hearing impaired persons who had been to court.[257] This perception may be attributable to several factors. They will be discussed to emphasize that successful implementation of any recommendation of this report will depend ultimately on increased sensitivity and commitment on the part of all court and related personnel to eliminate the language barrier for litigants.

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[257] A survey of poor persons' familiarity with and utilization of legal services in Puerto Rico concluded, "Many of the Puerto Rico findings serve to demonstrate that the general pattern identifiable in the United States of a gulf existing between the poor and the apparatus of the legal system may be equally applicable to Puerto Rico. There appears the same lack of contact between lawyers and the poor, whereby lawyers are seen in much the same way, as existing to provide a last-resort solution and then only rarely. The 'chasm between the poor and the traditional mechanisms for the redress of grievances' seems undoubtedly to exist. Equally apparent is the impression of the poor living to a large extent outside the law and its processes, facing a system which is inaccessible, and often incomprehensible, so that they do not see the law as an instrument of redress for their grievances and are thus cut off from, and cut themselves off from any help the lawy could bring them." I.M. Kennedy, "The Poor and the Law in Puerto Rico: A Study Illustrating the Argument in Favor of Teaching Legal Sociology in a Law School," 38 REV. JUR. U.P.R. 351,380 (1969).

Linguistic Dimension

The first dimension of insensitivity to linguistic minority clients is the linguistic dimension, many aspects of which have been introduced in Chapters Three and Four. The vocabulary of officers of the courts is too technical and legal terminology is simply not understood by many linguistic minority clients, regardless of their communicative competence in English. Even persons who have some English-speaking abilities find the English of the court to be too sophisticated for them. The range of vocabulary for the lawyer or judge is significantly beyond that of most linguistic minority clients. This is especially true of deaf clients and clients with little formal education.[258] Many judges and attorneys make special efforts to simplify the words they use and to explain the legal jargon in laypersons' terms, and this is greatly appreciated by such clients.[259] However, some judges and attorneys do not. The situation is exacerbated when some judges and attorneys speak too fast or do not allow sufficient time for interpreters to perform their duties.[260] Some steps have been taken to remedy this,[261] but many clients, especially those who speak languages other than English, Spanish and American Sign Language, remain unaffected by such efforts. Another approach taken by some judges who possess some knowledge of a client's language is to try and handle problems themselves. Available evidence suggests that this is often a dangerous practice as some of these judges are not sufficiently proficient in the language to take such actions.[262]

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[258] 15 B.R. 21-22 (Dec. 1984), 18 B.R. 20-21 (Dec. 1984).

[259] 12 B.R. 17 (Jun. 1983).

[260] 15 B.R. 33-34 (Dec. 1984).

[261] For example, the Municipal Courts of Vineland and Newark have developed videotapes which present statements of rights in English, Spanish and American Sign Language. In addition, several Municipal Courts distribute

It is also not sufficiently understood that persons who have acquired some and, sometimes, even substantial, competence in English, may be very uncomfortable trying to communicate in stressful situations in English--or find that the English they have learned simply eludes them.[263] Another feature of the person who is learning English is that many are afraid to speak up for fear of ridicule (e.g., because of a bad accent or inability to express themselves clearly in English) or because of pride. After all, the courts are viewed as intimidating by many if not most people, but the imposing nature of the courts is magnified when it is accompanied by a language barrier.[264]

Absent an appreciation of the linguistic features discussed in Chapter Three, some officers of the court tend to have unrealistic expectations of

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a Spanish version of "Your Rights in Municipal Court" at the beginning of each court session.

[262] 10 B.R. 16 (Apr. 1984), 15 B.R. 28 (Dec. 1984) and Rodriguez, supra n. 26, at 39.

[263] Interview with Jose A. LaBoy, Esq., in Vineland (Jun. 23, 1983) and 23 B.R. 19 (Apr. 1985).

[264] 10 B.R. 19 (Apr. 1984) and 12 B.R. 12,17 (Jun. 1983).

clients' abilities to speak English. Some believe that if a linguistic minority client has lived in this country for a certain period of time, they should have learned English. This sometimes results in a bias against linguistic minority clients that results in the conscious or subconscious intent--which sometimes manifests itself in attitudes or actions--to deny services to such persons.[265] For example, some respondents have alleged that parties who must communicate through interpreters suffer from a lack of credibility in the eyes of jurors, attorneys and judges and are more likely to be convicted in criminal matters and receive lower awards in civil cases.[266] In addition, some judges believe that the use of interpreters should be discouraged in order to encourage litigants to learn English.[267] One bilingual attorney has even concluded,

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[265] The issue of how persons in a host society view persons coming into the society who speak another language and represent another culture is a long-standing social problem and subject of study. The literature suggests that responses of ethnocentrism, condescension and discrimination --and, sometimes, outright hostility--are common, especially "when such factors as socioeconomic status, strong foreign accent, and color of skin are combined...." F. Grosjean, supra n. 87, at 65-66. See also E. Haugen, "The Curse of Babel," 102 DAEDALUS 47 (1973) and N.F. Conklin and M.A. Lourie, A HOST OF TONGUES: LANGUAGE COMMUNITIES IN THE UNITED STATES 115-116 (1983). For examples from the context of courts, see K.H. Claghorn, THE IMMIGRANT'S DAY IN COURT (1923).

[266] 10 B.R. 18 (Apr. 1984).

[267] For example, a few judges noted that interpreters should be used only when absolutely necessary because this will encourage the development of English skills. One judge wrote on his questionnaire, "I feel all people should be made to speak the English language." 9 B.R. 95 (Dec. 19830.

Claghorn found early in this century, in some courts, "a certain prejudice against an immigrant if he cannot speak English, and a tendency to regard all non-English-speaking persons as Bolshevists and dangerous radicals against whom it is proper to assume a tyrannical and unsympathetic attitude." Supra n. 265, at 214. She also reported one case where a judge postponed a case indefinitely until the litigant learned English. Id. at 236. See 9 B.R. 94-95 for a summary of the related attitudes of New Jersey's judges.

"Very often, the impression I am left with is that those who do not speak English need not litigate or be involved in a court matter, whether it is voluntary or involuntary."[268]

Educational Dimension

Many linguistic minorities know little about their legal rights, how courts work or what to expect when they get to court. Many have little formal education (e.g., 16% of adult Puerto Ricans have completed 0-4 years of school and deaf persons read and write English at an average of the third grade level) and illiteracy is not uncommon (the illiteracy rate among Hispanic prisoners may be as high as 38% for reading Spanish and as high as 50% for reading English).[269]

Many have had limited contact with the legal system in the United States or in the countries from which they come. Those that come with any knowledge often find themselves perplexed by the differences.[270] For example, the survey of deaf persons who had been to court in any capacity found that 40% felt they understood what to do in court, 33% were somewhat dissatisfied with their understanding, while 27% understood nothing about what to do.[271] Similar statistics have been reported for Hispanics.[272] "Most [linguistic minorities]," one bilingual attorney wrote, "are very unsophisticated with respect to asserting their rights. Apart from ignorance as to their rights, a great degree of trust or fear of the judge and the lawyer tends to render them mute and unquestioning as to events transpiring in the courtroom."[273]

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[268] 10 B.R. 32 (Apr. 1984).

[269] See 14 B.R. 31-39 (May 1984) for a discussion of literacy and levels of education among linguistic minorities.

[270] See 23 B.R. 51 (Apr. 1985) for an example regarding clients who speak Hungarian. Other examples are cited in 10 B.R. 20,27-28 (Apr. 1984).

[271] 18 B.R. 9 (Dec. 1984).

Behavioral Dimension

Many clients do not want to be perceived as "bothering" or "inconveniencing" the courts. Others are cynical about what will happen and mistrust the courts. There appears to be some justification for such perceptions. This report has already shown the shortcomings in the delivery of interpreting, translating and court support services. Some of the Task Force's surveys have elicited responses that suggest a perceived general negative attitude toward linguistic minorities on the part of some judges and non-judicial personnel.

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[272] Hispanic prisoners in New Jersey, when asked about the degree with which they understand the American court system, answered as follows: Not at all, 25%; Some, 45%; For the most part, 19%; Completely, 12%. Lee, supra n. 98, at 60.

[273] 10 B.R. 19 (Apr. 1984). See also 11 B.R. 37-38 (Jun. 1984) and 12 B.R. 17 (Jun. 1983).

Rodriguez identified some cultural reasons why non-English-speaking defendants do not take advantage of representation by appointed counsel. He wrote, "[T]he non-English speaking persons feel that the appearance before the Court with the presence of an attorney would insult the Court; therefore, the punishment imputed would be increased by the Judge. Still others feel that given the right to counsel, the appointed counsel could not assist them any way due to the fact that the attorney does not know how to speak their language." Supra n. 26, at 49. He also noted, interestingly, "Few non-English speaking defendants decide to be represented by counsel, but those who do, conclusively presume that the attorney knows what he is doing--so they will let him take whichever course of action he sees fit." Id. at 59.

There are reports that some court personnel actively discriminate against Hispanic and other linguistic minorities. This discrimination takes a variety of forms. Some allege that some judges impatiently disregard the ignorance or linguistic disabilities of linguistic minorities and rush their cases through at a rate faster than is typical for English-speaking cases.[274] There are reports that some court personnel have been overtly rude to or have ignored the presence of linguistic minority clients, refraining from offering assistance or giving English instructions when bilingual staff are not present. Others convey by their body language the message that linguistic minorities are not welcome, but nevertheless reluctantly and perfunctorily provide partial or complete services.[275] Some have noted that minority clients are generally treated with a lack of respect. Two examples given are these: no effort is made to pronounce names accurately and clients are called by their first name instead of their surname.[276] It was also claimed that some police departments permit a range of discriminatory practices, including police brutality, against linguistic minorities, especially Hispanics.[277] A bilingual employee of a Municipal Court also claimed, "Everything is political here and Hispanics and blacks are out."[278]

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[274] 16 B.R. 30 (Apr. 1985).

[275] See 23 B.R. 13-15 (Apr. 1985) for several examples from a Municipal Court.

[276] 10 B.R. 18,32 (Apr. 1984). It was also reported that some judges and other court personnel do not view attorneys who speak English with an accent favorably. Id. at 32.

[277] 15 B.R. 40 (Apr. 1985) and 23 B.R. 15 (Apr. 1985). For more claims about discriminatory practices of police, see Lee, supra n. 98, at 59-62.

Economic Dimension

Hispanics as a group, and Puerto Ricans especially among Hispanics, are the poorest of all racial/ethnic groups in the state. For example, the 1980 Census found Puerto Ricans to have the lowest per capita income ($3,618) and be most highly represented below poverty level (38.3%). The Judiciary's Sentencing Disparity Research Project found that 75% of Hispanic defendants were in the lowest economic class, compared to 67% of blacks and 16% of whites.[279] The expectation that they will provide their own interpreter, for example, carries with it the expectation that clients either pay for interpreters, which most are unlikely to afford, or rely on friends or relatives for assistance. This imposes a substantial burden on many persons that is not present for English-speaking clients.

Cultural Dimension

Add to all of these factors the reality that employees of the legal system are usually working with people who are culturally dissimilar and all of the major elements of the gulf that separate client and practitioner are reported. A court interpreter for the deaf made the following comment: "Few people understand the psychological makeup of a deaf mute leading to fear, mistrust, impatience by all parties concerned."[280] Other court interpreters offered the following additional examples:

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[278] 23 B.R. 14 (Apr. 1985).

[279] See 14 B.R. 39-41 (May 1984) for additional statistics and discussion of the economic standing of linguistic minorities in New Jersey.

> Interpretation of cultural body language is often ignored as unimportant by the judge.
>
> Even when found guilty, they feel satisfied if allowed to explain. Spanish people like to explain and cannot just answer, 'yes' or 'no,' otherwise they feel denied of the opportunity.
>
> People testifying under oath who are of the Muslim faith should be provided with a Holy Koran to be sworn in.[281]

Consequences

Many linguistic minorities feel vulnerable to potential abuse by the legal system. They do not know how to handle attorneys who may not adequately prepare them for court appearances or provide inferior representation in other ways.[282] They are also vulnerable in particular to unscrupulous attorneys,[283] especially if the attorney is of the same nationality and/or speaks the client's language.[284] Even well-intentioned, conscientious attorneys are inhibited from delivering full services. The language barrier restricts the thoroughness of their conferences with clients and limits the accumulation of evidence.[285] Access to justice is limited since rights may not be as well protected.

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[280] 15 B.R. 21 (Apr. 1985).

[281] Id. at 22.

[282] 10 B.R. 18,28 (Apr. 1984).

[283] Id. at 19.

[284] 12 B.R. 13 (Jun. 1983).

[285] 11 B.R. 32 (Jun. 1984) and 12 B.R. 12 (June. 1983).

These shortcomings surely erode the confidence of the public as well as linguistic minorities that the limited English proficient clients will find justice in the courts. Finally, they cannot develop a healthy trust in a system that does not understand them and treats them insensitively. An attorney with Legal Services summed up the concern as follows:

> My opinion is that people who do not speak English have more fear in dealing with the judicial systems, and therefore are less likely to take their problems there and less likely to be successful when they do. Aside from fear, being unable to understand the proceedings deprives them of one of their major functions, which is to resolve disputes in a way accepted by all participants as legitimate. To some extent, the judicial system achieves dignity by distancing itself from ordinary people--through special terminology, ritual, dress, etc. But in the extreme case, where the participant cannot comprehend the fundamentals of what is taking place, the legitimacy is lost and the system is perceived as arbitrary, even oppressive.[286]

The recommendations of the Task Force were framed with all of these findings in mind. A concrete, constructive, statewide approach to solutions will create an environment for attitudes to change.

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[286] 12 B.R. 16-17 (Jun. 1983).

CHAPTER FIVE

SUMMARY OF RECOMMENDATIONS

Introduction

The Task Force was charged with the responsibility of making recommendaions to the Supreme Court which would enhance the Supreme Court's ability to ensure that linguistic minorities have equal access to the courts of this State. Accordingly the Task Force has developed these recommendations in order to suggest actions to the Court based upon contemporary interpretations of Constitutional law, human rights, effective and efficient administration of justice, and public confidence in the Judiciary.

The recommendations presented in this chapter have evolved primarily from the findings described in Chapter Four. However, at least two other sources were relied upon as well. First, many valuable suggestions and helpful examples were provided by court personnel interviewed around the State. Second, the Task Force has drawn upon the greatest precedents in court interpreting, legal translating and other bilingual services provided by other jurisdictions, notably the Federal Bilingual Court Interpreters Act and the administration of the act by the Administrative Office of the United States Courts, the unified administration of court interpreting services in the State of Connecticut, and the Bilingual Services Act of California.

The core problem is that current judicial and court support services are not generally being delivered to linguistic minority clients by linguistically or culturally qualified persons within a context of clear and comprehensive policy and supportive administration. Sometimes the lack of competence is linguistic, other times it is cultural in nature.

The first set of recommendations seeks to improve the quality of services by equipping court interpreters, legal translators, bilingual and bilingual/multicultural court support personnel with the necessary expertise. Thus, recommendations #1 through #6, which flow from findings #1 through #4, are designed to facilitate equal access to justice for linguistic minorities by ensuring that the bilingual judicial employees who serve them are competent. This will be accomplished by the establishment of mechanisms for certifying professional credentials, expanding training and educational opportunities, and promulgating canons of ethics.

Truly qualified personnel must be complemented by legal and institutional foundations and structures. Recommendations #7 through #12, which flow from Findings #5 and #6, are designed to engender such a framework by securing an adequate statutory basis and a coherent and comprehensive body of judicial policy with commensurate administrative structures.

In order to achieve the maximal positive impact, the Task Force submits recommendations #13 through #15, which are based primarily on finding #7. These proposals are designed to facilitate equal access to justice for linguistic minorities by improving the sensitivity of court personnel, attorneys, and others who are not bilingual but are engaged in the delivery of services to persons of diverse cultural and linguistic backgrounds.

The recommendations submitted here cannot be implemented overnight. Rather, the changes to be brought about by action upon these recommendations will take time. Further, the Judiciary will require the active and supportive involvement of other branches of government, especially with respect to funding and education.

The recommendations submitted here are the highlights in recommendation form of a comprehensive set of policies contained in the proposed Standards on Court Interpreting, Legal Translating and Bilingual Services and a proposed statute. This approach seeks to focus initial attention on the major features of the Task Force's proposals rather than on all of the specific features of the proposed standards and statute. To enable easy reference, relevant sections of the proposed standards are identified throughout these recommendations. While this summary of recommendations includes all significant features of the standards and the act, the actual text of the Appendix should be consulted for details.

RECOMMENDATION #1

The Supreme Court should prescribe the qualifications of persons who interpret or translate in or for the courts.

The Supreme Court should prescribe the qualifications of all persons who interpret or translate in or for the courts in order to ensure that court interpreters and legal translators are fully qualified to serve in a manner similar to other professionals, e.g., shorthand reporters.[1] Recommended minimum qualifications are set forth in Section 1.3. of the Appendix for court interpreters and in Section 1.4 of the Appendix for legal translators.

Since court interpreters are frequently called upon to perform legal translations, the requirements for qualification as a court interpreter should encompass those required for a legal translator. While court interpretation and legal translation share many dimensions, there are essential differences requiring that they be viewed as two separate professions. Since court interpreters often must translate as well, the requirements of both professions must be met by those wishing to qualify as court interpreters. For those wishing to qualify exclusively as legal translators, the requirements relating specifically to court interpretation should be eliminated.

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[1] See 1 B.R. (Jul. 1982).

RECOMMENDATION #2

> The Supreme Court should recommend that the Legislature establish a State Board of Court Interpreting and Legal Translating analogous to the State Board of Shorthand Reporting. If such a Board is not recommended or is not established by the Legislature, the Supreme Court should establish an equivalent board.

The establishment of qualifications would be ineffective without an effective mechanism for testing those qualifications. Like other professions, court interpreters and legal translators must have their skills certified in order to protect the public interest.[2] Hence the Task Force recommends that a uniform certification process similar to that employed by the State Board of Shorthand Reporters be created by the Legislature in the form of a State Board of Court Interpreting and Legal Translating. Such a Board could be expanded to certify interpreters and translators for a wide array of other contexts, e.g., medical, mental health, education, and social services.[3]

Since the volume of interpreted cases varies from language to language and since the development of validated certification examinations is a very costly and time-consuming process, the Task Force proposes varying levels of qualification in the foreign languages. The Task Force's recommendations would require demonstration of professional competence for everyone regardless of language, but the certifying mechanisms used to determine that competence range from validated examinations of all features of court interpreting and legal translating to less sophisticated screening devices. The three levels for court interpreting include, beginning with the most rigorous level, "certified," "eligible" and "qualified." Legal translators would be either "certified" or "eligible."

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[2] Sellers v. Philip's Barber Shop, 46 N.J. 340 (1966). For a discussion of why court interpreting and legal translating should be viewed and fully established as professions, see 21 B.R. generally, but especially 1-4, 39-46 (Jan. 1984).

[3] See the comments of Miguel A. Munoz, Assistant Prosecutor in Union County, 11 B.R. 55 (Jun. 1984).

It is also possible that different levels of certification will be justified according to the court in which one interprets. For example, perhaps the person interpreting in the Municipal Courts does not need to present the same level of skill and knowledge as the person interpreting in criminal matters, or perhaps the levels are close enough to require no distinction. The Task Force does not know so it recommends, therefore, that any certification program that is established be based upon documented levels of linguistic, knowledge and skill levels required for performing satisfactorily.[4]

The recommendation that all court interpreters be certified was supported by virtually everyone with whom the Task Force consulted.[5] It is also a recommendation that has been made many times before, whether with a specific focus on New Jersey[6] or as general policy recommendations for the administration of justice.[7] It has also been required in the Federal courts[8] as well as the courts of California.[9]

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[4] In Australia there is a National Accreditation Authority for Translators and Interpreters that has five levels of accreditation, each depending on the level of skill required for interpreting in different kinds of contexts. N.A.A.T.I., LEVELS OF ACCREDITATION FOR TRANSLATORS AND INTERPRETERS (1978); Victorian Ethnic Affairs Commission, SUBMISSION TO THE VICTORIAN POLICE INQUIRY: INTERPRETING AND THE LAW (n.d.; probably 1983).

[5] Judges, 9 B.R. 50 (Dec. 1983); attorneys, 10 B.R. 30-31,38 (Apr. 1984); 11 B.R. 41,54 (Jun. 1984); 12 B.R. 9-10,25 (Jun. 1983); court interpreters, 15 B.R. 36 (Dec. 1984); Trial Court Administrators, 7 B.R. 3,40 (Aug. 1983).

The Task Force has drafted a proposed bill to initiate the process. It suggests that Title 45, Professions and Occupations, should be amended so as to establish a State Board of Court Interpreting and Legal Translating. See pages 54-55 of the Appendix for the text of the act proposed by the Task Force.

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[6] Note, "The Right to an Interpreter," 25 RUTGERS L. REV. 145,169 (1970); F. Martinez, "A Comprehensive State-wide Plan for Use of Bilingual Court Interpreters in New Jersey," in A STUDY OF THE PROBLEMS AND NEEDS OF NEW JERSEY COURTS FOR BILINGUAL COURT INTERPRETERS 26,32-33 (L.J. Hippchen ed. Jan. 1975); L.J. Hippchen, "Development of a Plan for Bilingual Interpreters in the Criminal Courts of New Jersey," 2 THE JUST. SYS. J. 258, 266; and M.R. Frankenthaler and H.L. McCarter, "A Call for Legislative Action: The Case for a New Jersey Court Interpreters Act," 3 SETON HALL LEG. J. 125 (1978).

[7] G.J. Gilligan and W.J. Bryers, "A Model Court Interpreters Act," 3 SETON HALL LEG. J. 228,237-238. Ontario Law Reform Commission, REPORT ON ADMINISTRATION OF ONTARIO COURTS, PART III 52-54 (1973) P.S. Lopez, JUSTICE SYSTEM INTERPRETER CERTIFICATION--TASK FORCE REPORT (n.d., probably late 1973); Advisory Committee for Study of Language Needs of Non-English Speaking Persons, A REPORT TO THE JUDICIAL COUNCIL [OF CALIFORNIA] ON THE LANGUAGE NEEDS OF NON-ENGLISH SPEAKING PERSONS IN RELATION TO THE STATE'S JUSTICE SYSTEM--INTERIM REPORT OF ADVISORY COMMITTEE AND PHASE II REPORT, PROVISION OF COURT INTERPRETING SERVICES: AN OVERVIEW 10-15 (1976) Comptroller General of the United States, USE OF INTERPRETERS FOR LANGUAGE-DISABLED PERSONS INVOLVED IN FEDERAL, STATE, AND LOCAL JUDICIAL PROCEEDINGS 34 (1977) A. Pousada, "Interpreting for Language Minorities in the Courts," in LANGUAGE IN PUBLIC LIFE 186 (Georgetown Uniersity Round Table on Languages and Linguistics, J.E. Alatis and G.R. Tucker eds. 1979); C. Astiz, "Language Barriers in the Criminal Justice System: A Look at the Federal Judiciary," Address to the National Hispanic Conference on Law Enforcement and Criminal Justice (July 27-30, 1980).

[8] 28 U.S.C. §1827(b) provides, "The Director [of the Administrative Office of the United States Courts] shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States..., and in so doing, the Director shall consider the education, training, and experience of those persons."

[9] CAL. GOV'T. CODE §68561 requires the State Personnel Board "to develop court interpreter testing programs...."

However, the Task Force submits an alternative recommendation should such a Board not be constituted. The back-up proposal is that the Supreme Court establish a certifying board analogous to the Board of Bar Examiners.

RECOMMENDATION #3:

> The Supreme Court should prescribe the qualifications of appropriate bilingual and bilingual/multicultural court support personnel and should adopt policies to ensure that services delivered by court support personnel to linguistic and cultural minorities are linguistically and culturally appropriate.

This recommendation seeks to ensure that linguistic minorities receive services from persons who will communicate effectively with them and who will be more likely to make culturally appropriate responses to them. It would require, for example, that presentence reports be investigated and authored by a person fluent in or at least sensitive to the client's language and culture. It would also require demonstration of linguistic and cultural relevance in the delivery of diagnostic and therapeutic services. For example, the potential for abuse in civil commitment hearings when a linguistic minority is the subject of the hearings will be reduced. In short, a message will be sent to both internal and external support services that linguistic minorities should receive such services from linguistically and culturally fluent bilingual/multicultural personnel. See proposed standards 1.7.0 through 1.7.14.

In order to ensure that the services delivered by court support personnel to persons with limited proficiency in the English language are linguistically and culturally appropriate, the Supreme Court should prescribe the qualifications of all bilingual and bilingual/multicultural personnel. Such qualifications are set forth in section 1.6 of the Appendix.

RECOMMENDATION #4

> The Chief Justice should recommend that the Chancellor of the Department of Higher Education designate several public institutions of higher education as centers for (1) training court interpreters and legal translators, (2) equipping persons studying in fields leading to employment in the support services internal or external to the Judiciary with cultural fluency and optional, ancillary interpreting and translating skills, and (3) developing the requisite skills of court personnel who are presently employed.

Just like most other judicial positions, court interpreters, legal translators bilingual and bilingual/multicultural court support personnel should receive their basic professional preparation in the college classroom. In addition, there is no curriculum at the undergraduate level, much less a program, and very little at the graduate level, that prepares persons in the related human services disciplines for cross-cultural delivery of services. Consequently, the state's institutions of higher education do not presently prepare persons for service in these positions, especially at the undergraduate level, and the Judiciary has only a tiny pool of self-educated or otherwise experienced persons upon which to draw. Further, critical related agencies such as mental health, social service, medical, educational and other services on which the Judiciary is often dependent do not have an adequate supply of persons to draw upon who have had available to able to them educational opportunities in the cross-cultural dimensions of their respective professions.

This training is especially critical for court interpreters over the next few years as it will have to make up for the almost total absence of training they have been offered heretofore. Persons who have been working in good faith should have the opportunity to receive training which would help them come up to the minimum acceptable level of competence which they were not required to attain before. The recommendation for this training has been made widely by the interpreters themselves[10] and many others.[11]

Courses in court interpretation and legal translation historically have been few and far between.[12] Present resources for training court interpreters and legal translators are inadequate in New Jersey. The Judiciary, not to mention other public and private agencies which rely on interpreters and translators for bridging communication barriers, requires such training resources so that court interpreters and legal translators seeking to serve in the legal context will be able to meet the minimum standards for certification and qualification. Montclair State College has most of the elements of a comprehensive training program in its curriculum already. With additional curriculum and materials development, an academic minor and/or a certificate program could be established to train court interpreters. Any other college would have to start almost from scratch. Thus, the Montclair State Program can serve as a model for the development of similar programs at other selected public institutions of higher education throughout the State.

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[10] 15 B.R. 26-27 (Dec. 1984) and 22 B.R. 75-76 (Mar. 1984).

[11] Judges, 9 B.R. 90-91 (Dec. 1983), Trial Court Administrators, 7 B.R. 4,40 (Aug. 1983), attorneys, 10 B.R. 38 (Apr. 1984) and 12 B.R. 25 (Jun. 1983).

[12] 21 B.R. 12-20 for a discussion of some of the history and status of training in these fields. Note that the need also exists for additional courses in intercultural communication to be offered.

A promising new opportunity is on the horizon that should be noted. The University of Arizona's Summer Institute on Court Interpretation will be held at Montclair State College during June and July of the current year. This will give court interpreters in New Jersey and the East an unprecedented opportunity to receive critically needed training from an institute with established credentials.

RECOMMENDATION #5

> The Supreme Court should recognize the need for ongoing training and provide for the continuing professional education of current and future personnel who provide court interpreting, legal translation, bilingual and bilingual/multicultural court support services.

Every profession changes over time as do the clients served. Every professional needs to refine skills, keep abreast of developments in the field, and improve knowledge. Continuing education is an integral component of any profession, and the professions under consideration here are no different. In addition, the Judiciary is a dynamic organization that changes over time. New awareness, new laws, and new policies are often arriving on the scene.

Ongoing education is essential for bilingual and bilingual/multicultural personnel, too. Scholarly publications in cross-cultural delivery of services have been issued in increasing numbers in the last fifteen years, and there is a desperate need to drawn upon the best of it. As this is a relatively young field, New Jersey is in an excellent position to help shape the field of cross-cultural delivery of court services. The corresponding proposed standards are 1.9.16.0 through 1.9.16.2 and 1.9.17 in the Appendix.

RECOMMENDATION #6

> The Supreme Court should adopt canons of ethics binding upon all persons who interpret or translate in or for the courts.

The professions of court interpreting and legal translating can be viewed as being in their infancy. The fact that both court interpreting and legal translating are fairly new fields has led to much confusion on the part of those who work with court interpreters and legal translators. To put it quite simply: many individuals who work with court interpreters and legal translators do not know the ethical parameters of the duties of these professionals. Some court interpreters and legal translators feel confused themselves, for sometimes they are obligated to perform tasks which they feel instinctively are not within their province. In the absence of clear-cut guidance, court interpreters and legal translators sometimes perform tasks which they should not have undertaken or do so in ways that are inappropriate.

Virtually every profession has canons of ethics that regulate professional conduct. Just as the Supreme Court has approved canons of ethics for attorneys and judges, and just as the court has approved the development of a code of ethics for Probation Officers,[13] it should also adopt ethical standards for court interpreters and legal translators.

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[13] ADMINISTRATIVE CODE FOR THE NEW JERSEY JUDICIARY--PROBATION SERVICES §9: 4-1(d) (May 31, 1983).

The Task Force developed its code of ethics after consulting many codes promulgated by professional associations and agencies of government and reviewing many of the ethical dilemmas that were reported to the Task Force. The proposed canons of ethics are presented in section 1.5 of the proposed standards. The purpose of these canons is to upgrade the professional quality of these services and thereby support the administration of justice. The canons can also serve as an orientation for judges, helping them to assess the reliability of a court interpreter or legal translator. If a court interpreter were to violate any of the provisions set forth in the canons, such interpreter would be subject to disciplinary action and to any sanction that may be imposed under law. See section 1.5 of the Appendix for the proposed Canons of Ethics.

RECOMMENDATION #7

> The Supreme Court should recommend that the Legislature establish a comprehensive statutory basis providing adequate court interpretion and legal translation services for all linguistic minorities, modeled upon existing statutory provisions for the deaf and hearing impaired.

The Legislature passed a state-of-the-art bill in 1984 that enacts a panoply of rights for deaf and hearing impaired persons who come before official proceedings. This act should be amended (or a separate statute enacted) to extend the rights of deaf and hearing impaired persons to all persons who have limited proficiency communicating in English. The act should also authorize the Judiciary to employ such interpreters (full-time, part-time or per diem) as is necessary in order to ensure the protection of the rights of linguistic minorities authorized by the act.

Further, the other statutes having to do with the appointment and salaries of interpreters, namely, N.J.S.A. 2A:11-28 through 11-30, should be repealed. One of the major purposes of such a repeal would be to place all full-time, official interpreters fully under court control, whereas current law provides that they shall be appointed by and work under the supervision of the Sheriff in counties of the first class. The Task Force finds that this arrangement is not in the best interests of efficient court administration or effective delivery of services. The Task Force's recommended legislation is on pages 51-54 of the Appendix.

RECOMMENDATION #8

> The Supreme Court should adopt uniform standards to govern all phases of all interpreted court proceedings and determine responsibilities for paying the related costs.

Tremendous diversity marks the way court proceedings are handled by judges, attorneys, court interpreters and others. There are inconsistencies and confusion in virtually every area: which petitioners should be permitted to have an interpreter, who should be allowed to interpret, the role of the interpreter, rights to interpreters, use of foreign languages by judges or attorneys, the taking of evidence, and whether and when interpreters should be sworn. The Supreme Court should adopt standards in these and related areas to provide guidance to judges and others to achieve greater uniformity and fairness. While the proposed rules provide for some flexibility, they establish goals and responsibilities to cover ordinary situations.

Some of the specific recommendations contained in the proposed standards are these. First, with a few exceptions, only persons who have met established qualifications should ever be permitted to interpret or translate in or for a court. Second, uniform instructions clarifying the role of the court interpreter would be given to witnesses, jurors and defendants. Third, a linguistically sound mechanism would be used to determine whether a request for a court interpreter is bona fide (as opposed to a judge's subjective impression). Next, uniform oaths should be used. Fifth, guidelines should be established on how to handle alleged errors committed in interpretation and how to remove a given court interpreter. Finally, the modes of interpretation to be used at certain times should be fixed. See sections 1.2 and 1.9.3. of the proposed standards for these and other features relating to court proceedings.

Perhaps the most difficult issue concerning interpreted proceedings is responsibility for paying for court interpreting services. Most counties and municipalities do not adequately fund these services. Just as the Task Force recommends following the model of shorthand reporters for certification, the Task Force recommends that all court interpreters, including those that serve the Municipal Courts, be employees of the Administrative Office of the Courts like the official court reporters. The Task Force recommends further that interpreting services be coordinated, provided and paid for by the Judiciary in all situations except for defense and party interpreting (both of which involve interpreting between client and counsel, the former in criminal matters and the latter in civil matters). Only in this way can the courts guarantee fair and disinterested hearings and avoid conflict of interest or the appearance thereof. The Judiciary should therefore provide all witness and proceedings interpreters. Permitting interpreters to serve who are retained by or have an interest in certain parties compromises in fact or in appearance the fair and disinterested standard of court hearings.

RECOMMENDATION #9

> The Supreme Court should assure effective organization and efficient administration of court interpreting, legal translating, bilingual and bilingual/multicultural court support services at the state and local levels.

Every institution must devise a method of allocating resources so that all tasks can be accomplished quickly and efficiently. The state's court system is no different. If the courts do not administer their personnel effectively, the result will not only be detrimental to the courts themselves, but also to the individual litigants and the community at large. Again, the Task Force recommends that the organization and administration of court interpreting services follow the precedent of organizing and administering reporting services.

There are three features of this recommendation that should be emphasized. First, the Administrative Office of the Courts should create a permanent Section which would submit policy recommendations, monitor for compliance with official policy, coordinate the translation of uniform forms and documents, facilitate professional development through training and continuing education, and oversee the administration and organization of court interpreting, legal translating, bilingual and bilingual/multicultural court support services. This Section would be advised by an Advisory Board whose members represent court interpreters, legal translators, scholars in related fields, judges, court administrators, court support services, and linguistic minorities. The corresponding standards are 1.9.1 and 1.9.2 respectively.

Secondly, court interpreting services should be organized on a regional basis with regional administration. The Task Force believes that the best way to efficiently coordinate the assignment of court interpreting services is to organize the vicinages into regions based on work load. While a few vicinages might constitute their own regions, most vicinages do not have sufficient court interpreting work load to justify the employment of full-time, official court interpreters. This arrangement would permit the most efficient use of these resources, allowing the head interpreter in each region to assign official and per diem court interpreters to any court within the region. Where work load varies, staff court interpreters can be sent to neighboring regions and avoid the need of bringing in free-lance court interpreters. A truly unified court system can allocate resources to places that need those resources. See the related standards at section 1.9.9.

The third aspect seeks to render more efficient the utilization of court interpreting resources. The Task Force recommends that clients be required to give advance notice if they will need the assistance of an interpreter. The second proposal is that interpreted cases be scheduled in a way that makes the best use of each interpreter's availability. Finally, the fact that a client needs an interpreter and other bilingual assistance should follow that client through every stage. See related standards 1.7.1 and 1.9.10.

RECOMMENDATION #10

> The Supreme Court should adopt policies which will attract, employ and retain sufficient numbers of qualified court interpreters, legal translators, bilingual and bilingual/multicultural court support personnel.

Although all of the previous recommendations can help to attract and retain qualified personnel, they do not go far enough. The additional policies necessary to ensure sufficient numbers of personnel to meet the needs of the community include: the setting of goals or standards for numbers of employees in the respective bilingual positions, the establishment of career ladders, the fixing of salaries commensurate with the skills involved, and the maintenance of working conditions conducive to professional performance and job satisfaction.

Accordingly the Task Force recommends first that the Supreme Court set guidelines regarding numbers of court interpreters, bilingual and bilingual/multicultural court support personnel who should be employed (sections 1.7.12 through 1.7.14 of the proposed standards) in the vicinages. This recommendation enjoys the support of two other committees. The Supreme Court Committee on Pretrial Intervention issued the following recommendation:

> Program staff should comprise significant numbers of men and women who live or have lived in the community from which participants are drawn, and who themselves represent cultural, racial, ethnic and linguistic groups in reasonable proportion to the participant population.[14]

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[14] [FINAL] REPORT 38 (emphasis in original; Jun. 19, 1981).

Second, the Subcommittee on Operating Standards and Guidelines for Probation of the 1982 Judicial Conference on Probation recommended:

> Standard No. 4: The probation departments shall utilize the bilingual probation officer title in numbers proportional to the numbers of probationers in that category.[15]

The Task Force recommends next that opportunities for career advancement be assured for court interpreters, bilingual and bilingual/multicultural court personnel (sections 1.9.4. and 1.9.5). Next, the Task Force recommends that the Supreme Court mandate appropriate programs for supervising and evaluating these employees and free-lance court interpreters. Court interpreters in particular should be evaluated at least once annually (standard 1.3.6).

In addition, the Supreme Court should adopt policies that assure adequate compensation for court interpreters, legal translators, bilingual and bilingual/multicultural court support personnel. The findings showed clearly that court interpreters are generally underpaid and that the extra skills of bilingual and bilingual/multicultural court support personnel are not adequately reflected in their salaries. Therefore, the Task Force recommends that the Supreme Court fix the salaries for all court interpreters, as it does for court reporters, and adopt a policy that new employees in bilingual positions start at least one step above the minimum salary of the range for their titles. Similarly, persons in bilingual/multicultural positions should begin at least two steps above the minimum salary within the title's range. This approach recognizes the additional degree of linguistic or linguistic and cultural competence required of the respective sets of positions. See proposed standards 1.9.4.3 and 1.9.5.2.

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[15] FINAL REPORT ON OPERATING STANDARDS AND GUIDELINES FOR PROBATION I-13 (May 5, 1982).

RECOMMENDATION #11

> The Supreme Court should adopt a policy that requires all judicial forms and documents used by persons involved in court proceedings to be drafted in easily translatable English and be translated into such additional languages as the Administrative Director of the Courts approves, all such translations to be made by approved legal translators, and all such translations to be printed at levels of quality equal to that of the corresponding English versions.

It is often necessary when delivering court services that the parties involved complete forms and questionnaires that range from simple to elaborate. For instance, an individual cannot file a complaint in small claims court without completing a detailed statement of the case. Such forms are vital to the administration of justice. Recent studies have shown that legal language is not always comprehensible to the average layperson and the Task Force found that even forms without legal terminology may not always be fully comprehensible to the average layperson. How much more confusing these forms must be for individuals who do not have full command of the English language.

This recommendation recognizes the need for simplified or "plain" English documents. This is a related problem indirectly affecting the translation of documents. A basic principle of legal translation is that the tone and level of language of the source document must be retained in the translation. Thus, complex English documents which are often incomprehensible to the general public are even less likely to be understood by the non-English-speaking public in translated form. Since the Judiciary controls the drafting of all forms and other documents that are ultimately translated, the legal translator is in the unusual position of being able to participate in the drafting of such materials so as to ensure that they are drafted initially in easily translatable English. Since the principles of drafting in "plain English" and drafting in "easily translatable English" are virtually identical, this approach has the added advantage of improving readability for English-reading clients as well.

The Administrative Director of the Courts should implement a policy which requires that the drafting of all uniform forms used by the public be drafted according to the principles of writing easily translatable English. Further, he should identify all languages into which court forms and documents should be translated. This would ensure that existing and forthcoming forms developed for statewide use are drafted in more readable English and uniformly translated. In addition, such a measure would provide that the translated versions will be of a professional quality equal to that of the English originals.

Most of these recommendations are found in proposed standards 1.8. Additionally, recommended standards 1.7.1. through 1.7.6 would require that all summonses, courthouse signs, forms to be used by pro se litigants and booklets explaining the scope of rights a person enjoys are to be translated in "each additional language which is spoken by 5% or more of the court's clients."[16]

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[16] The standard of 5% is derived from §7296.2 of California's Dymally-Alatorre Bilingual Act of 1973. 1973 Cal. Stat. 1182. Codified at CAL. GOV'T. CODE. §7290 *et seq*. The only related formulae available in New Jersey are the requirement to print ballots in Spanish when 10% or more of the registered voters speak Spanish (*e.g.*, *N.J.S.A.* 19:23-22.4) and the requirement to establish a program in bilingual education when "there are within the schools of the district 20 or more pupils of limited English-speaking ability in any one language classification..." (*N.J.S.A.* 18A: 35-18).

RECOMMENDATION #12

> The Supreme Court should adopt a program of informing linguistic minorities about the Judiciary and its services and should establish a procedure to enable linguistic minorities to bring allegations of unprofessional performance or unequal access to the legal system and to seek resolution thereof.

It has been shown clearly that most linguistic minorities do not understand their rights or the substance or procedures of the legal system. The ordinary means of learning about rights and the courts--especially through the media--are largely closed to them and the option of appearing pro se in some matters is effectively foreclosed.

There should also be a system for monitoring individuals working within the court system as court interpreters, legal translators, or bilingual/multicultural personnel in order to ensure that these individuals do not infringe upon the rights of the minorities they serve. In view of the vulnerability of most linguistic minorities and the absence of a visible means of assuring accountability for delivering court services to linguistic minorities, the Supreme Court should establish a viable mechanism which will encourage the filing of complaints when rights of linguistic minorities are allegedly not protected, when linguistic minority clients are not treated with dignity and respect, or when any related policies established by the Supreme Court are not honored.

That is the connecting point between the two parts of this recommendation. One way of achieving this purpose is to promulgate information that describes what linguistic minorities can rightfully expect from the courts and also to disseminate information regarding the mechanism to be used should one wish to bring allegations of unequal accessibility to the courts to the attention of the Judiciary. See the following related standards: 1.0.3, 1.7.11 and 1.9.18.

RECOMMENDATION #13

> The Supreme Court should adopt policies and programs to orient and sensitize all court personnel who deliver services to linguistic minorities with regard to the importance and complexities of communicating with persons of diverse linguistic and cultural backgrounds. This orientation should include instruction regarding techniques of working with a court interpreter.

The problems of communication in general and cross-cultural communication in particular have been studied by anthropologists and linguists, among others, and it is generally recognized that there are many factors--both linguistic and cultural--which can impede effective communication. Persons such as court interpreters and legal translators are highly sensitive to the problems inherent in cross-cultural communication because both interpreters and translators work with language. Similarly, bilingual/multicultural court support personnel are also aware of the obstacles to effective communication. Unfortunately, other individuals who work within the court system are not as sensitive to these problems and frequently do not know how to overcome some very basic difficulties which may arise when dealing with individuals who are unfamiliar with the prevailing culture.

Therefore, the Task Force recommends that all employees of the Judiciary who have contact with clients should be sensitized to the dynamics of intercultural communication and the effects of cross-cultural interference on the administration of justice.[17] As part of this briefing or orientation they should also learn how to work effectively with interpreters and should know relevant policy and standards on service delivery to non-English speakers. Judges and non-bilingual court support personnel should receive training in order to enable them to deliver more culturally appropriate and, hence, effective services. See sections 1.9.16.3 and 1.9.16.4 of the proposed standards.

RECOMMENDATION #14

> The Chief Justice should recommend that the state's law schools and other institutions for educating the bar offer instruction to attorneys and other legal personnel on how best to provide effective services which are sensitive to the diverse backgrounds of linguistic and cultural minorities, as well as how to work with a court interpreter.

In cases involving the use of an interpreter, it is fundamental that counsel for both parties know how to make effective use of the interpreter. Many attorneys do not know how to work with interpreters, and ultimately the only person who truly suffers for this lack of expertise is the litigant. In addition, many attorneys are not sufficiently aware of other linguistic and cultural factors that can inhibit the effectiveness of their services.[18]

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[17] This was also a concern of the Subcommittee on Operating Standards and Guidelines of the 1982 Judicial Conference on Probation. This subcommittee submitted the following recommended standard:

> The training programs offered by the county probation departments and the Administrative Office of the Courts shall address the needs of staff in the area of multicultural awareness and sensitivity.

FINAL REPORT ON OPERATING STANDARDS AND GUIDELINES FOR PROBATION at I-14 (May 5, 1982).

The New Jersey Institute for Continuing Legal Education has set a good example in this area by offering courses on "Spanish for Lawyers and Legal Personnel." Such leadership represents an excellent beginning, and should be built upon and developed further.

RECOMMENDATION #15

> In the light of the findings and recommendations of this Task Force, the Chief Justice should recommend that the offices of the Attorney General (County Prosecutors), Public Advocate, and Legal Services evaluate the accessibility of their services to linguistic and cultural minorities.

It is of utmost importance that members of linguistic minorities have full access to the offices of the County Prosecutors, Legal Services and the Public Advocate (especially the Public Defender). In some municipalities, neither the Public Defenders nor the Prosecutors employ bilingual personnel and the accessibility of their services to victims and offenders alike are thereby diminished.

The Chief Justice should disseminate to these agencies the findings of the Task Force, particularly with respect to reports received regarding their services, and invite them to evaluate their policies, personnel and services vis-a-vis linguistic minorities.

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[18] See, *e.g.*, J.R. Figliulo, "Breaking the Language Barrier," 10 LITIGATION 32 (1984), M.R. Frankenthaler, "How to Work with Court Interpreters," N.J. LAW. 24 (1981) and A. Rainof, "How Best to Use an Interpreter in Court," CAL. ST. BAR J. 196 (1980).

CHAPTER SIX

STRATEGIES FOR IMPLEMENTING THE RECOMMENDATIONS

Introduction

This chapter will suggest some strategies that may support the implementation of the Task Force's recommendations. It will become apparent at the outset that some of the proposals cannot be implemented immediately but should be viewed as long-term goals. The Task Force has prepared these strategies fully recognizing the need for in-depth cost analysis and feasibility studies of the proposed organizational structure for the services. Further, there is significant need for collaboration and support from the Legislature and the Department of Higher Education.

Broadly speaking, the Task Force recommends that the Supreme Court adopt the proposed Standards on Court Intepreting, Legal Translating and Bilingual Services contained in the Appendix. Once these standards have been adopted, the foundation will have been laid for full implementation of these recommendations.

The Task Force also suggests that the Administrative Office of the Courts develop a plan of action for implementing the rules. The plan of action would include short-range and long-range timetables. This chapter provides some suggested strategies for implementing the recommendations the Task Force believes will assist the Supreme Court and Administrative Office of the Courts.

RECOMMENDATION #1

The Supreme Court should prescribe the qualifications of persons who interpret or translate in or for the courts.

Once the Supreme Court adopts the pertinent proposed standards, the only other task to be performed to implement this recommendation is to modify existing job descriptions and/or create new ones that are consistent with such qualifications.

RECOMMENDATION #2

The Supreme Court should recommend that the Legislature establish a State Board of Court Interpreting and Legal Translating analogous to the State Board of Shorthand Reporting. If such a Board is not recommended or is not established by the Legislature, the Supreme Court should establish an equivalent board.

The first step the Judiciary should take is to submit the proposed act that would create the State Board of Court Interpreting and Legal Translating to the Legislature for its consideration. Clarification of the fate of this proposal must be achieved at the earliest possible date so the Supreme Court can know whether it should begin making plans to develop its own program of certification.

Until such time as a full program of certification is in place, regardless of the setting, the Administrative Office of the Courts should (1) provide intensive training to current court interpreters and (2) screen existing staff court interpreters. The training program should introduce court interpreters to the Standards on Court Interpreting, Legal Translating and Bilingual Services and prepare them for working under such guidelines, especially with respect to the Canons of Ethics. Such training should also enhance their technical skills in interpreting, including drills in the simultaneous and consecutive verbatim modes.

Secondly, all current personnel who interpret in the courts should be required to undergo a screening of their vocabulary and expertise in legal translating and court interpreting. This testing should be performed by a panel of expert linguists. Persons who fail this preliminary screening twice should be prohibited from interpreting until they demonstrate through certification or other approved review that they present the requisite minimum skills. Every effort should be made to assure that any full-time interpreter who fails this screening is transferred to another position in the Judiciary.

In addition, all persons in full- or part-time interpreting positions should be given a period of two years to complete the minimum of eighteen college credits as stipulated by the standards. The period of two years would begin at the outset of the next college semester after the adoption of the standards.

Until certification is available, all candidates for full- or part-time court interpreting positions anywhere in the Judiciary should be screened in the same way. No one should be hired until having passed this screening.

Free-lance court interpreters in the foreign languages should be screened immediately through an identical process. A list of all persons approved by this evaluation should be developed and promulgated to all of the courts. Except in extraordinary circumstances, no free-lance court interpreter should be permitted to interpret in any court after the promulgation of the list unless he or she has passed this screening and is included on the list.

Until such time as the initial screenings have been completed and a list is promulgated, judges shall inquire on the record of the training, experience certifications and related qualifications of every person who wishes to interpret. Unless the judges are satisfied that such persons are adequately qualified as determined by parameters suggested by the Administrative Office of the Courts, such persons should be prohibited from interpreting.

The minimum cost of these initial training and screening activities will be approximately $30,000. Second, the creation of a Board of Court Interpreting and Legal Translating would incur costs. The annual cost for the Board is estimated at $55,000 (about $20,000 for staff, about $30,000 for each test developed [the annual costs would depend on the frequency that a new test would have to be developed], about $2,000 for board meetings, and about $3,000 for related costs [e.g., supplies, cost of administering the examinations]).[1]

Finally, once certification testing is in place, everyone who wishes to interpret or translate should be required to pass the exam. Full-time interpreters who have passed the initial screening should have two opportunites to pass the exam before, upon failing the second time, they would be removed from their positions. Everyone else would be required to complete all certification prior to being permitted to interpret or translate. The Administrative Office of the Courts should reimburse the cost of tuition incurred by full-time, official court interpreters who are completing their required eighteen hours of credit. Such reimbursement should be contingent upon the student's passing a given course with a minimum grade of C.

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[1] This assumes one new examination per year, while in reality a new examination may be required only every other year. However, the Board will be obliged to certify interpreters and translators in languages other than Spanish and English. Hence there is likely to be more than one examination per year with the additional costs attached to each exam. The estimate of $30,000 per exam is based on what it costs the Administrative Office of the United States Courts to develop each certification examination.

RECOMMENDATION #3

> The Supreme Court should prescribe the qualifications of appropriate bilingual and bilingual/multicultural court support personnel and should adopt policies to ensure that services delivered by court support personnel to linguistic and cultural minorities are linguistically and culturally appropriate.

This recommendation emphasizes that the Supreme Court should determine the minimum qualifications for these personnel regardless of the agency that employs or tests such personnel. For such employees as are tested and certified by the Department of Civil Service, the Administrative Office of the Courts should forward the prescribed qualifications to that Department and assist it in the creation of such new titles as may be necessary (e.g., Probation Officer--Bilingual/Multicultural). For such employees as are not tested and certified by the Department of Civil Service (e.g., R. 1:33-3 positions and employees of the Administrative Office of the Courts), the Administrative Office of the Courts should develop standards and screening devices which would be used in recruiting and hiring persons for bilingual and bilingual/multicultural positions. The qualifications on the various job descriptions for all related court support titles should be modified as soon as possible.

RECOMMENDATION #4

The Chief Justice should recommend that the Chancellor of the Department of Higher Education designate several public institutions of higher education as centers for (1) training court interpreters and legal translators, (2) equipping persons studying in fields leading to employment in the support services internal or external to the Judiciary with cultural fluency and optional, ancillary interpreting and translating skills, and (3) developing the requisite skills of court personnel who are presently employed.

The Administrative Office of the Courts, in consultation with scholars and practitioners in the related fields, should conduct job audits to determine the skills required in the fields of legal translating, court intepreting, bilingual and cross-cultural delivery of human services. This research and development should be completed within two months of the presentation of this Final Report and the Chief Justice should forward such proposals with his support as soon thereafter as possible.

The Chief Justice should recommend that the Chancellor undertake an initiative of developing curricula, materials and programs required for the process of designating centers for education in court interpreting, legal translating, and the bilingual and cross-cultural delivery of human services. This will ensure adequate professional preparation for both current and future employees in these areas. Given the often lengthy process required to secure approval of new curricula, early and decisive leadership on the part of the Chancellor will be critical for establishing and making new curricula available in a timely fashion.

RECOMMENDATION #5

> **The Supreme Court should recognize the need for ongoing training and provide for the continuing professional education of current and future personnel who provide court interpreting, legal translating, bilingual and bilingual/multicultural court support services.**

In consultation with practitioners in these fields and the institutions designated by the Chancellor of the Department of Higher Education as training centers, the Administrative Office of the Courts should adopt a plan for a permanent training program for all bilingual personnel. The plan should include as a minimum two seminars per year for court interpreters and legal translators, one seminar per year for persons in bilingual public contact positions, and another two seminars per year for bilingual/multicultural personnel in direct service positions. The program should be designed and offered by the institutions designated as training centers by the Chancellor. Although the three types of seminars will tend to focus on subjects primarily concerning the respective types of service, some of them will overlap and employees in each of the types should be encouraged to attend seminars given for others. In addition, bilingual employees should be encouraged to attend the seminars for court interpreters and legal translators since they will most likely find themselves working with court interpreters or legal translators at some time in their careers. This relationship between the state's institutions of higher education and the Judiciary will permit the offering of substantially diverse sessions that are accessible across the state.

RECOMMENDATION #6

> The Supreme Court should adopt canons of ethics binding upon all persons who interpret or translate in or for the courts.

Once adopted, nothing is required to implement the Canons of Ethics beyond printing and disseminating them. These canons should be sent to every judge, court administrator, official court interpreter, bilingual court support employee who is called on to interpret, free-lance court interpreter, translating and/or interpreting agency, and to every County Prosecutor, the Public Advocate, every office of the Public Defender, and all offices Legal Services and Legal Aid, and should be published in the N.J.L.J. so as to inform the bar.

RECOMMENDATION #7

> The Supreme Court should recommend that the Legislature establish a comprehensive statutory basis providing adequate court interpretation and legal translation services for all linguistic minorities, modeled upon existing statutory provisions for the deaf and hearing impaired.

The Supreme Court should request the Administrative Office of the Courts to review and evaluate the proposed act promptly and, after any modifications approved by the Supreme Court, forward a recommendation to the Legislature that the act be considered.

The legislation in its present form would incur costs in two respects. First, the costs of delivering interpreting services in virtually all situations would be underwritten by the State. The Legislature may want to modify the proposed legislation in order to include an appropriation of funds to cover all of these costs, thereby removing these costs from the counties and municipalities. Second, the Administrative Office of the Courts would need to add some personnel to handle the additional obligations assigned to that office by the act.

Before the Judiciary makes a request for state funding of interpreting and translating services, however, it should complete an analysis of work load and document thereby the actual number of positions that would be required to satisfy court interpreting needs. See the discussion of recommendation #10, infra, for details about this baseline of data.

The estimated cost of a state-funded system for only the salaries of court interpreters is an estimated minimum of $615,750 in the first year (see Table Three below for specifics as to how this amount was calculated). The discussion of recommendation #9 will show that an additional $150,000 would be needed to administer these services.

It will be helpful to compare those projected costs against the costs presently being incurred for interpreting services. The Task Force found that a minimum of $356,794 is spent statewide on interpreting services (see Table Four). This figure is certainly conservative since it (1) includes costs of only the eighteen Municipal Courts with the highest volume of interpreted proceedings, (2) does not account for all the interpreting performed by volunteers which in the future would be performed by paid professionals, and (3) does not include a portion of the time given by all bilingual personnel (especially in Superior Court) who are called on to interpret in addition to their regular duties.

The Judiciary's request for funding could be made at the annual submission of the Judiciary's budget or as a special appropriation. While the chances that such a proposal would have a favorable action are not known, there are at least two indications that the Governor and Legislature might be receptive. First, we have already noted that a state-of-the-art bill has been enacted which requires certified interpreters to be appointed by the courts at the expense of the courts in every type of court proceeding involving deaf and hearing impaired clients. Assembly No. 1636 has been introduced to amend that act in order to provide interpreters for deaf jurors. While the legislation did not directly appropriate any moneys in support of the bill, we detect a commitment to ensure that linguistic minorities' rights are protected in the courts.

Second, the Joint Appropriations Committee provided for an extraordinary item for fiscal year 1980 that is related to the recommendations of this Task Force. By resolution 289 introduced by Senator Yates, $150,000 was appropriated to the Department of Corrections in order to fund a "Hispanic Parole Officer Program" which would place a Hispanic (bilingual) Parole Officer in each of the Department's nine district offices. The program has been a regular part of the Department's budget ever since.

TABLE THREE

Estimated Costs for State Funding of Court Interpreters

Region and Counties Within Region	Estimated Monthly Average # of Proceedings with Interpreter	Estimated # of Interpreters	Estimated Total Costs
Region I: Bergen, Hunterdon, Morris Passaic, Somerset, Sussex & Warren	1,427	1 Ct. Int. I 6 Ct. Int. II	$ 19,000 $ 96,000
Region II: Essex, Middlesex & Union	2,037	1 Ct. Int. I 9 Ct. Int. II	$ 19,000 $144,000
Region III: Hudson	2,270	1 Ct. Int. I 10 Ct. Int. II	$ 19,000 $160,000
Region IV: Atlantic, Burlington, Camden, Cape May, Cumberland Gloucester, Mercer, Monmouth, Ocean & Salem	1,568	1 Ct. Int. I 7 Ct. Int. II	$ 19,000 $112,000
		Sub-total	$588,000
Estimated Costs for Per Diem Interpreters			
200 cases annually at 2 hour minimum ($50)			$ 10,000
100 cases annually at ½ day rate ($90)			$ 9,000
50 cases annually at full day rate ($175)			$ 8,750
		Sub-total	$ 27,750

These estimates are based on data supplied by the judges.

These figures are based on the following assumptions: each interpreter can accommodate about 200 proceedings monthly, that the regional supervisors should be paid a minimum of $19,000 and that entry level interpreters should be paid about $16,000, all of which are no more than reasonable estimates of the absolute minimum official court interpreters should be paid. The Task Force would like to see each start at at least $2,000 more than the minimum salaries upon which this table is based.

TABLE FOUR

Current Costs of Interpreting Services

Jurisdiction	Full & Part-time Interpreters	% of Salary of Bilingual Staff	Per Diem Interpreters
Municipal Courts	$ 53,425	$ 77,161	$ 16,855
Counties	$ 158,225	$ 20,955	$ 30,173
TOTAL	$211,650	$ 98,116	$ 47,028

These figures were received either in interviews with the Trial Court Administrators (applicable to 1981-1982) or mailed questionnaires returned from the Municipal Courts (applicable to 1983). Note that the years for which data were collected differ from the lower courts to the upper courts, a methodological difference whose effect is unknown and merely urges caution in viewing these data as more than indicators.

If the State does not underwrite the costs of a statewide, unified court interpreting service for all of the trial courts, the traditional sources of funding--the counties and the municipalities--will be obliged to cover these costs. If the counties are obligated to underwrite these services, new costs to the counties are estimated to be less than $1,000 for seven counties, from $1,100 to $5,000 for seven counties, and over $5,000 for four counties.[2] While this suggests that the average burden per county may not be excessive, it clearly would be excessive for some (e.g., the county which appears to be likely to undergo the greatest additional cost is Hudson; +$53,520).

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[2] The estimates supplied in Table Five and in the following paragraph are very rough and rest on guesses of work load and assumptions about what full-time interpreters should be paid. Accordingly these numbers should be viewed as suggestive at best.

Implementation of these recommendations would be more burdensome to the municipalities (Municipal Courts) than to the counties (Superior Court). This is the case because of the greater likelihood of the Municipal Courts to rely upon volunteers, interpreters supplied by litigants and bilingual staff. The effects would be most burdensome among the municipalities on those Municipal Courts that have high volumes of interpreted proceedings except for a handful of courts that have already taken steps to provide for more qualified interpreters (e.g., Camden, Newark, Passaic, Perth Amboy and Vineland).[3] While it is impossible to give estimated budgets for all Municipal Courts here, it may be instructive to provide estimates for a sample of Municipal Courts. The estimates about to be reported were derived in the same fashion as the estimates supplied for the counties in Table Four so they should be viewed with the same caution that was urged for viewing the county estimates. Here is a selected list of the estimated increase in cost to municipalities: Atlantic City, $6,400; Dover, $6,000; Elizabeth, $6,400; Garfield, $1,600; Hoboken, $9,000; Jersey City, $39,000; Monroe, $4,800; Paterson, $34,000; Trenton, $15,000; Union City, $16,000; and West New York, $8,000.

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[3] This list and the examples supplied at the end of this paragraph is based on data collected August-October, 1983, and does not reflect changes that may have occurred in Municipal Courts since then.

TABLE FIVE

Estimated New Costs to the Counties for Interpreting Services

County	Revised Estimate of the Average Monthly Number of Interpreted Proceedings[a]	FTE's[b]	Estimated Costs[c]	Estimated Increase in Cost[d]
Atlantic	30	.20	3,200	+ 1,700
Bergen	128	.85	16,000	0
Burlington	12	.08	1,280	+ 1,280
Camden	92	.61	9,760	+ 8,560
Cape May	1	.007	112	+ 112
Cumberland	28	.19	3,040	+ 3,040
Essex	625	4.40	73,400	+13,000
Gloucester	5	.03	480	+ 480
Hudson	849	5.67	93,720	+53,520
Hunterdon	4	.03	480	+ 480
Mercer	23	.15	2,400	+ 1,900
Middlesex	141	.94	16,000	+ 3,000
Monmouth	17	.11	1,760	+ 1,700
Morris	17	.11	1,760	+ 1,650
Ocean	7	.05	800	+ 800
Passaic	360	2.40	41,400	0
Salem	8	.05	800	+ 800
Somerset	3	.02	320	+ 320
Sussex	0	.00	0	0
Union	178	1.19	19,040	+ 7,040
Warren	2	.01	160	+ 160

[a] This revised estimate is based on data supplied by judges in a 1982 survey. The figures reported by the judges were revised to include estimates of proceedings before judges who did not submit data.

[b] FTE=Full-time equivalents are calculated as follows: Total number of monthly proceedings divided by 150, the estimated number of proceedings one interpreter can manage.

[c] This is calculated as follows: (1) FTE x $16,000; (2) If FTE is greater than .75, this justifies a full-time position regardless of the FTE x $16,000 amount; (3) Any county with two or more interpreters should have a supervising interpreter whose salary might be about $3,000 beyond that of the staff interpreters.

[d] This estimate is based on budget data for 1981 and 1982 and may not accurately reflect current budgets.

RECOMMENDATION #8

The Supreme Court should adopt uniform standards to govern all phases of all interpreted court proceedings and determine responsibilities for paying the related costs.

The proposed Standards on Court Interpreting, Legal Translating and Bilingual Services should be published for the purposes of public comment. It may be desirable to have one public hearing at which the public can voice its interests. This period of comment should conclude within three months of the date the Final Report and the proposed Standards are released to the public.

The Administrative Office of the Courts should prepare a review and analysis of the comments received from the public and submit a brief report to the Supreme Court. It should include as well any proposed modifications of the report together with its own recommendations as to the value of such proposals. The Supreme Court should then expedite its review of the proposed Standards and the suggested modifications and adopt those portions of the Standards it sees fit to approve. The Court may wish to adopt the Standards initially on a preliminary, pilot test basis, assuming they would be undergoing review for a period of time. The Standards would be binding, but major problems could be brought to the Court's attention for review and modification as the Court deems necessary.

In advance of the approval of the Standards (whether on a pilot or permanent basis), the Administrative Office of the Courts should develop a plan for apprising the judges and attorneys of the Standards. The plan should provide for such training sessions as may be necessary in which all of the major features of the Standards would be explained and, where possible, illustrated through role plays or videotapes.

The standards governing court proceedings have no economic costs attached to them beyond training judges and printing copies of the standards themselves. If the counties and municipalities will be obligated to pay for the costs, two sets of difficulties will arise. First, several counties, some vicinages and all but three or four Municipal Courts will not have enough interpreted proceedings to justify the employment of a full-time interpreter. This will force those courts to rely on per diems and make the management of interpreting services much more complex and it will be more difficult to secure statewide compliance with related policy. Secondly, there is a problem of the additional costs incurred by (1) hiring new court interpreters, (2) raising salary ranges of existing court interpreters to levels that are commensurate with the qualifications soon to be required of court interpreters, and (3) being obligated to provide interpreters to a much wider range of proceedings than is presently the case. The additional costs to be picked up by the counties and municipalities will almost double their current investments. As Tables Three and Four show, approximately $356,794 is presently being spent by the counties and municipalities on interpreting services while it will cost an estimated $615,750 to employ sufficient numbers of qualified interpreters in the trial courts and an additional $150,000 for administration of the services by a new section at the Administrative Office of the Courts. The economic impact would be most severe on the municipalities since Municipal Courts have relied so extensively on the parties to supply interpreters.

RECOMMENDATION #9

The Supreme Court should assure effective organization and efficient administration of court interpreting, legal translating, bilingual and bilingual/multicultural court support services at the state and local levels.

First, the Administrative Office of the Courts should, immediately upon action on these recommendations, work toward creating the Interpreting, Translating and Bilingual Services Section with a full complement of staff. The estimated cost of this section is $150,000 distributed as follows: $95,000 for staff (which includes a Chief Interpreter/Translator [Spanish-English] and an interpreter for the deaf to handle most proceedings which require such an interpreter), $3,000 for materials and supplies, $36,000 for research and training consultants, and $16,000 for equipment (a start-up cost incurred only in the first year).

Second, the Chief Justice should appoint the members of the advisory committee on interpreting, translating and bilingual services. Perhaps this committee should be appointed early so as to supplement limited staff resources in the early months after adoption of the rules.

Within the first two months of the adoption of the Standards, a work load study should be put in place to document the volume of interpreted proceedings in the state. This will provide the foundation upon which the vicinages will be divided into regions. Acting Court Interpreter I's, the regional supervisors, should be appointed within three months of the adoption of the Standards by the Supreme Court or the appropriation of funding by the Legislature.

RECOMMENDATION #10

The Supreme Court should adopt policies which will attract, employ and retain sufficient numbers of qualified court interpreters, legal translators, bilingual and bilingual/multicultural court support personnel.

The Administrative Office of the Courts should review and evaluate the adopted standards and determine appropriate job titles, salary ranges, and a comprehensive program for ensuring the professional development of persons who serve as interpreters, bilingual or bilingual/multicultural support personnel. Special attention should be given to prevent the locking in of persons in bilingual or bilingual/multicultural titles to dead-end positions. For example, there should be bilingual or bilingual/multicultural titles for both Probation Officer and Senior Probation Officer so long as the latter is a direct service position.

First, the research on work load which will establish the baseline of data required to identify the mandated minimum number of interpreters, bilingual and bilingual/multicultural personnel has already been mentioned. This will give administrators a plan with documented numbers of needed personnel that would move toward compliance with the Supreme Court's standards.

Once the standards are in place, each vicinage should then move to create new titles and fill them in compliance with the plans. This should be accomplished through attrition where possible. For example, Probation Officer--Bilingual positions would probably be modified to bilingual/multicultural positions and would be filled on a replacement basis as existing positions are vacated. The only type of title which may require completely new positions is the interpreter/translator title. In some cases, compliance with the work load requirements of interpreting will require completely new positions which will have to be added to existing budgets.

It should be noted that the proposed rules recommend that persons in bilingual positions be paid from the date of hire one step more than persons in non-bilingual equivalent titles. Similarly, employees in bilingual/multicultural titles should be paid at least two steps above other persons in the regular title. This arrangement is justified in both instances primarily by the nature and degree of *additional qualifications* required of the candidates for these positions as well as, secondarily, the need to attract and retain qualified candidates. Obviously it will cost more, then, to replace some vacant positions and, where this recommendation is adopted locally, this may involve additional costs to the counties.

The Task Force submits the following proposed court rules as possible vehicles for implementing this and related recommendations:

1:34-7. Court Interpreters and Translators

Court interpreters and legal translators shall be appointed in accordance with standards fixed by the Supreme Court. They shall be responsible to and under the supervision of the supervisor of court interpreters of a vicinage or region, the Assignment Judge(s) of the vicinage or region, and the Administrative Director of the Courts. The Administrative Director of the Courts shall promulgate regulations which shall govern all court interpreters and legal translators and the services they render during court proceedings, in the preparation of translation of documents to be introduced into evidence, in the preparation of depositions, and for any court support service.

1:34-8. Bilingual and Bilingual/Multicultural Court Support Personnel

All support positions which involve substantial contact with limited English proficient clients of the courts shall include sufficient numbers of bilingual personnel to provide the same level of services to these persons as is available to English-speaking persons. All direct service positions which involve substantial contact with limited English proficient clients of the courts shall include sufficient numbers of bilingual/multicultural personnel to provide the same level of services to these persons as is available to English-speaking persons. Persons appointed to bilingual or bilingual/multicultural positions shall be appointed in accordance with standards fixed by the Supreme Court.

RECOMMENDATION #11

> The Supreme Court should adopt a policy that requires all judicial forms and documents used by persons involved in court proceedings to be drafted in easily translatable English and to be translated into such additional languages as the Administrative Director of the Courts approves, all such translations to be made by approved legal translators, and all such translations to be printed at levels of quality equal to that of the corresponding English versions.

This can be adopted immediately as a statement of intent and actual staff work can begin as they are available. The first steps would be to identify qualified legal translators with whom such work can be contracted and to establish a modus operandi at the Administrative Office of the Courts with all its divisions that develop and promulgate forms and other documents for the express use of clients. Secondly, a subcommittee of the Advisory Committee should be convened to start work on the recommended standards guiding the preparation of legal translations.

RECOMMENDATION #12

The Supreme Court should adopt a program of informing lingustic minorities about the Judiciary and its services and should establish a procedure to enable linguistic minorities to bring allegations of unprofessional performance or unequal access to the legal system and to seek resolution thereof.

The Supreme Court should authorize the undertaking of a study which would begin by identifying and evaluating existing models designed to enable consumers to assert their rights before public agencies (e.g., ombudsman-type functions). It should also review existing mechanisms in the Judiciary that have similar functions (e.g., procedures and mechanisms for filing ethics complaints against attorneys and judges). Finally it should explore other options that present themselves as potential mechanisms (e.g., simple procedures in which a client submits a written complaint to the Assignment Judge or someone designated by the Assignment Judge). The study with its recommendations should be presented to the Supreme Court within one year.

RECOMMENDATION #13

The Supreme Court should adopt policies and programs to orient and sensitize all court personnel who deliver services to linguistic minorities with regard to the importance and complexities of communicating with persons of diverse lingustic and cultural backgrounds. This orientation should include instruction regarding techniques of working with a court interpreter.

At the very outset a considerable investment of staff time and resources will be required to apprise judges and court administrators of the new policies and the ramifications of those policies for day-to-day court administration. This training should be delivered to the jurisdictions with substantial volumes of interpreted proceedings first and to the remaining jurisdictions as is commensurate to their respective volumes of interpreted proceedings. The costs for this training program is accommodated under the $150,000 required to create a permanent section in the Administrative Office of the Courts. If such a Section is not created, this training program would cost an estimated $5,000 in consultant fees and materials.

Once the critical training needs of the main actors have been met, then the Administrative Office of the Courts should develop an ongoing program for training all pertinent personnel according to the requirements of the proposed rules. This plan should be part of the annual training program of the Judiciary.

RECOMMENDATION #14

> The Chief Justice should recommend that the state's law schools and other institutions for educating the bar offer instruction to attorneys and other legal personnel on how best to provide effective services which are sensitive to the diverse backgrounds of linguistic and cultural minorities, as well as how to work with a court interpreter.

In consultation with attorneys, related scholars and practitioners, the Administrative Office of the Courts should develop some recommendations as to curricula that should be incorporated into existing courses or should inspire totally new courses. This could be a project of a subcommittee of the Advisory Board. The project should also address the resources of the Institute for Continuing Legal Education and the state's bar associations and encourage them to sponsor seminars to sensitize the legal community.

RECOMMENDATION #15

> In the light of the findings and recommendations of this Task Force, the Chief Justice should recommend that the offices of the Attorney General (County Prosecutors), Public Advocate, and Legal Services evaluate the accessibility of their services to linguistic and cultural minorities.

The Chief Justice should send a letter with a copy of the Final Report to the Attorney General, the County Prosecutors, the Public Advocate, the Public Defender, and the heads of Legal Services agencies. Therein he should encourage them to take note of the findings of the Task Force that are applicable to them and encourage them to evaluate the accessibility of their services for linguistic minorities and develop remedial plans of action.

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N.J.S.A. 34:9A-7.2.

N.J.S.A. 34:5A-4c,5,11a,11b,12.

N.J.S.A. 34:84-10d.

N.J.S.A. 35:1-2.

N.J.S.A. 52:36-4.

Paterson's Laws of New Jersey, 1800, p. 129.

Rev. of 1877, p. 1049, §27.

28 U.S.C. §§1827,1828.

29 U.S.C.A. §794.

42 U.S.C. §2000d.

42 U.S.C.A. 2996f(h).

APPENDIX

TO THE

FINAL REPORT

OF THE

NEW JERSEY SUPREME COURT TASK FORCE

ON

INTERPRETER AND TRANSLATION SERVICES

May 22, 1985

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1.0 SCOPE, GOALS AND RELAXATION

1.0.0 Scope

These standards define and govern the practice and administration of all court interpreting, legal translating and bilingual or bilingual/multicultural services delivered by officers of or under the authority of the New Jersey Supreme Court as prescribed by the Supreme Court and implemented by the Administrative Director of the Courts.

1.0.1 Purposes

These standards seek to:

(A) Assure meaningful access to all courts and court services for persons who are limited English proficient, placing them as nearly as possible in the position of English-speaking persons;

(B) Protect the constitutional rights of criminal defendants to the assistance of a court interpreter during court proceedings (see State v. Linares, 192 N.J. Super. 391, 394 [Law Div. 1983] and People v. Carreon. 198 Cal. Rptr. 843, 847 [1984] for a summary of these rights);

(C) Protect the integrity of evidence taken through court interpreters and legal translators;

(D) Ensure due process in all phases of litigation for persons who are limited English proficient;

(E) Ensure equal protection of the laws for persons who are limited English proficient;

(F) Increase efficiency and uniformity in handling proceedings which involve a court interpreter and/or legal translator; and

(G) Implement relevant provisions of L. 1983, c. 564.

1.0.2 Relaxation of the Standards

Any standard may be relaxed or dispensed with when adherence to it would result in an injustice (see R. 1:1-2) or noncompliance with a purpose set forth above in standard 1.0.1.

1.0.3 Enforcement of These Standards

Everyone should watch for intentional and unintentional violations of these standards and report them under approved and published procedures to the appropriate person or office. See Code of Judicial Conduct 3B(2,3), and standards 1.7.11 and 1.9.18 herein; Gilligan and Bryers, " Model Court Interpreters Act," 3 SETON HALL LEG. J. 270-271 (1978).

1.1 DEFINITIONS

1.1.0 "Approved court interpreter" means an interpreter who may serve as court interpreter by virtue of having been deemed an eligible, qualifying or certified court interpreter.

1.1.1 "Approved legal translator" means a translator who may translate legal documents by virtue of having been deemed a certified or eligible legal translator.

1.1.2 "Bilingual" means being able to speak both English and another language with perfect ease, and being able to think, develop abstractions, and use other specialized forms of each language in both writing and speech at the minimum level of proficiency determined by the Administrative Office of the Courts. Prosser, THE CULTURAL DIALOGUE: AN INTRODUCTION TO INTERCULTURAL COMMUNICATION 291 (1978).

1.1.3 "Certified court interpreter" means a person who has been certified as such by the State Board of Court Interpreting and Legal Translating in accordance with standard 1.3.2. or standard 1.3.5.

1.1.4 "Certified legal translator" means a person who has been certified as such by the State Board of Court Interpreting and Legal Translating in accordance with standard 1.4.2.

1.1.5 "Client" means a person who is--

(A) A principal party in interest (i.e., a complainant, defendant, witness, or parent/guardian of a juvenile); or

(B) Under some form of court control or supervision (e.g., probationers, P.T.I. enrolees, persons placed on supervisory treatment or continuance).

1.1.6 "Consecutive verbatim court interpretation" means relaying "a message in the target language in a sequential manner after the speaker has completed a thought. The speaker may pause at the end of a sentence or a question, or pause before the end of a statement if the ideas involved are complicated." This method is verbatim. Zahner, "Interpreting for Legal Personnel," in SKILLS FOR BILINGUAL LEGAL PERSONNEL 78 (M.R. Frankenthaler ed. 1982).

1.1.7 "Cultural fluency" means understanding and respecting the cultural characteristics and expectations of others, responding to such clients throughout the professional relationship in a manner that is culturally appropriate for the client. See Valera-Schutz and Gonzalez, "Cultural Fluency," in SKILLS FOR BILINGUAL LEGAL PERSONNEL 1-64 (M.R. Frankenthaler ed. 1982), for specific details and examples.

1.1.8 "Defense interpreter" means an interpreter who facilitates communication between a defendant in a criminal matter and the defendant's counsel in order to ensure the defendant's right to the effective assistance of counsel. Chang and Araujo, "Interpreters for the Defense: Due Process for the Non-English-Speaking Defendant," 63 CALIF. L. REV. 801,802 (1975); People v. Carreon, 198 Cal. Rptr. 843,846 (Cal. App. 5 Dist. 1984). See related standard 1.1.18 as the same person may serve as both defense interpreter and proceedings interpreter.

1.1.9 Direct service position" means any position filled by an employee of the Judiciary which emphasizes the paraprofessional or professional abilities of (1) gathering information through interviews, (2) analyzing and interpreting information about clients, (3) making recommendations to judges, (4) intervening directly in clients' lives, (5) supervising clients who are under some type of court control, or (6) otherwise exercising professional judgment in a context where the rapid acquisition of a client's trust is critical for the service to be successful.

1.1.10 "Eligible court interpreter" means a person who has been approved as such by the State Board of Interpreters and Translators in accordance with standard 1.3.3.

1.1.11 "Eligible legal translator" means a person who has been approved by the State Board of Court Interpreting and Legal Translating in accordance with standard 1.4.3.

1.1.12 "Interpret" means to serve as a medium for effective communication between two or more persons who speak different languages by converting orally or by means of some other form of communication, e.g., sign language, the speech of the respective parties to and from each other's language. The source of the message being converted is always a speech act of some kind (i.e., instead of a written document).

1.1.13 "Intermediary court interpreter" means a court interpreter who, because of intimate acquaintance with hearing impaired persons with minimal language skills, can be used as an intermediary between the hearing impaired person and an approved court interpreter. *L*. 1983, *c*. 564, §2e.

1.1.14 "Limited English Proficient (LEP)" means a person who--

(A) Is unable to speak English or to comprehend what others say in English because the person--
  (1) Has a *hearing impairment*; or
  (2) Has a *mother tongue or native language other than Standard American English*.
(B) Within the context of a court proceeding or a service rendered by an employee or agent of the Judiciary;
(C) Such that the person is unable to use English effectively and meaningfully as a functional tool of communication for sending and receiving information at a minimum level of functional proficiency;
(D) Thereby partially or completely--
  (1) Excluding the person from full participation;
  (2) Inhibiting the person's understanding of the charge or the nature of the proceedings; or
  (3) Substantially prejudicing the person's rights.

This definition relies primarily on the following sources: *L*. 1983, *c*. 564, §2b; *N.J.A.C*. 6:31-1.1; *N.J.S.A*. 18A:35-16; the *Bilingual Education Act, Title VII*, §703 *(20 U.S.C*. §3223); González, THE DESIGN AND VALIDATION OF AN EVALUATIVE PROCEDURE TO DIAGNOSE THE ENGLISH AURAL-ORAL COMPETENCY OF A SPANISH-SPEAKING PERSON IN THE JUSTICE SYSTEM 64-87 (1977); and Gilligan and Bryers, *supra* §1.0.3.

1.1.15 "Multicultural" means being comfortable with and generally knowledgeable about the culture of the dominant Anglo-American culture of New Jersey and the culture and major subcultures of a linguistic minority at the minimum level of "cultural fluency" (see standard 1.1.7 for definition) defined by the Administrative Office of the Courts and being able to deliver effective, culturally fluent services to persons in both cultures.

1.1.16 "Official court interpreter" means an approved court interpreter who has been supplied by the court. This court interpreter may be a full- or part-time employee of the Judiciary or a person retained by the Judiciary on an hourly, half-day or per diem basis.

1.1.17 "Party court interpreter" means an interpreter who facilitates communication between a party and the party's counsel during a civil matter.

1.1.18 "Proceedings court interpreter" means an approved court interpreter who facilitates a limited English proficient defendant's understanding of what is happening throughout all portions of every proceeding. The purpose of a proceedings court interpreter is to protect the defendant's right to be present at his or her own trial, a right established primarily for criminal defendants. Chang and Araujo, *supra*, at §1.1.9; See also *Baltierra v. State* (1979) Tex.Cr.App., 586 *S.W.2d* 553,556-559; *Commonwealth v. Pana* (1976) 469 Pa. 43,49, 364 *A.2d* 895,898; *State v. Natividad* (1974) 111 Ariz. 191,194, 526 *P.2d* 730,733; and *Carreon*, *supra* §1.1.9. See related standard 1.1.8.

1.1.19 "Public contact position" means any position filled by an employee of the Judiciary which has limited contact with clients and the public (e.g., receptionist, telephone operator, bailiff, court attendant, secretary, etc.).

1.1.20 "Qualifying court interpreter" means a person who has been approved as such by the State Board of Court Interpreting and Legal Translating in accordance with standard 1.3.4.

1.1.21 "Sight translation" means an immediate oral translation in court of a written text.

1.1.22 "Simultaneous verbatim interpretation" means conveying a message from a speaker to a listener "as soon as the court interpreter is able to make the transformation from the source language into the target language. The source language is the language of the original speaker; the target language is the language of the listener, the language into which the court interpreter is communicating the meaning of the words spoken." This method is verbatim. Zahner, *supra* §1.1.6, at 77.

1.1.23 "Standard American English" is the most prestigious variety of American English dialects which serves as "a model for acceptable or 'correct' usage based on the language of cultural, economic, and political leaders." Conklin and Lourie, A HOST OF TONGUES: LANGUAGE COMMUNITIES IN THE UNITED STATES 96 (1983).

1.1.24 "Summary court interpretation" means providing a non-verbatim summary of the words of a speaker "by paraphrasing and condensing the original message." Unlike simultaneous and consecutive verbatim court interpreting, this method does not provide a "precise rendering of everything that is said into the target language." Zahner, *supra* §1.1.6, at 79.

1.1.7 "Cultural fluency" means understanding and respecting the cultural characteristics and expectations of others, responding to such clients throughout the professional relationship in a manner that is culturally appropriate for the client. See Valera-Schutz and Gonzalez, "Cultural Fluency," in SKILLS FOR BILINGUAL LEGAL PERSONNEL 1-64 (M.R. Frankenthaler ed. 1982), for specific details and examples.

1.1.8 "Defense interpreter" means an interpreter who facilitates communication between a defendant in a criminal matter and the defendant's counsel in order to ensure the defendant's right to the effective assistance of counsel. Chang and Araujo, "Interpreters for the Defense: Due Process for the Non-English-Speaking Defendant," 63 CALIF. L. REV. 801,802 (1975); *People v. Carreon*, 198 *Cal*. *Rptr*. 843,846 (Cal. App. 5 Dist. 1984). See related standard 1.1.18 as the same person may serve as both defense interpreter and proceedings interpreter.

1.1.9 Direct service position" means any position filled by an employee of the Judiciary which emphasizes the paraprofessional or professional abilities of (1) gathering information through interviews, (2) analyzing and interpreting information about clients, (3) making recommendations to judges, (4) intervening directly in clients' lives, (5) supervising clients who are under some type of court control, or (6) otherwise exercising professional judgment in a context where the rapid acquisition of a client's trust is critical for the service to be successful.

1.1.10 "Eligible court interpreter" means a person who has been approved as such by the State Board of Interpreters and Translators in accordance with standard 1.3.3.

1.1.11 "Eligible legal translator" means a person who has been approved by the State Board of Court Interpreting and Legal Translating in accordance with standard 1.4.3.

1.1.12 "Interpret" means to serve as a medium for effective communication between two or more persons who speak different languages by converting orally or by means of some other form of communication, *e.g.*, sign language, the speech of the respective parties to and from each other's language. The source of the message being converted is always a speech act of some kind (*i.e.*, instead of a written document).

1.2 STANDARDS FOR INTERPRETED COURT PROCEEDINGS

1.2.0 Scope

These standards apply to all proceedings before the Grand Jury, all Parts of the Superior Court, the Tax Court and all Municipal Courts, as well as administrative hearings and other services rendered by judges and persons under the authority of the Supreme Court.

1.2.1 When Relaxing a Standard

When the court relaxes or dispenses with any of these standards, the presiding judicial officer shall enumerate each standard so relaxed and shall state on the record the reasons for the relaxation.

1.2.3 Use of Approved and Other Interpreters

1.2.3.0 Except as provided in standard 1.2.3.2, all proceedings requiring the assistance of a witness or proceedings court interpreter (see standards 1.2.4 and 1.9.3) shall be served by an approved court interpreter.

1.2.3.1 Defense and party court interpreters should be approved court interpreters.

1.2.3.2 Witness and proceedings court interpreters who are not approved court interpreters may be used only when one or more of the following conditions prevails:

(A) The need for a court interpreter for a language which rarely appears appears in New Jersey's courts cannot be met given the available pool of certified and qualified court interpreters; or

(B) An approved court interpreter or a hearing-impaired person believes that an intermediary court interpreter is needed to assist the approved court interpreter.

1.2.3.3 Procedures When Using Unapproved Interpreters

The following procedures shall be complied with when unapproved witness and proceedings court interpreters are used.

1.2.3.3.0 Stating Reasons for Use

The reasons that justify the use of an unapproved witness or proceedings court interpreter shall be stated on the record.

1.2.3.3.1 Standards for Using Unapproved Court Interpreters

Any time a court determines that an unapproved witness or proceedings court interpreter must be used, the court shall satisfy itself, on the record, that the proposed court interpreter--

(A) Possesses adequate experience, training and education to be qualified to serve as an expert witness as required by Evid. R. 17 and 19;

(B) Is capable of communicating effectively with the officers of the court and the person for whom the court interpreter would interpret;

(C) Knows and understands the standards adopted by the Supreme Court on court interpreting, especially the Canon of Ethics;

(D) Will comply with these standards and the Canon of Ethics. Any provisions of these standards or the Canon of Ethics which cannot be honored shall be noted on the record.

1.2.3.3.2 Notice of Use of an Unapproved Interpreter

In every instance that an unapproved witness or proceedings court interpreter is used, the court shall notify the Administrative Office of the Courts. Such notice shall include at least the following: case name and docket number(s); list of the grounds for using the interpreter; and list of the standards and canons of the Canon of Ethics which were not honored.

1.2.4 Determination of Need for a Court Interpreter

1.2.4.0 Any client shall be deemed to have a bona fide need for a court interpreter when--

(A) Representation is made by counsel or pro se litigant that a client is limited English proficient; or

(B) An officer of the court advises the court that a client is limited English proficient; or

(C) The court, on its own motion, finds that a client is limited English proficient.

1.2.4.1 When the court questions whether a person for whom a court interpreter has been requested is limited English proficient, the court may request a person authorized by the Administrative Office of the Courts to assess the person's language ability according to a formal and structured process developed by the Administrative Office of the Courts. The court may refuse a request for a court interpreter only when a person has been found to possess sufficient English proficiency as determined by an authorized person.

1.2.4.2 If any person falsely represents a need for a court interpreter, the court may invoke any sanctions, including contempt.

1.2.5.0 Determination of Appropriateness of Court Interpreter

The presiding judicial officer shall make a preliminary determination, on the record and prior to the outset of any portion of a proceeding, that the witness or proceedings court interpreter who has been appointed for a given case is able to communicate readily with the limited English proficient client and with the officers of the proceeding.

1.2.5.1 Mode of Determination

1.2.5.1.0 Interpreter's Responsibility

With the knowledge and consent of counsel, the court interpreter should briefly interview the limited English proficient client prior to the outset of the proceeding in order to become familiar with speech patterns and linguistic traits of the client, especially technical or special terms the client will use or hear. Judicial Council of California, Standards of Judicial Administration, §18.1 (a)(1).

1.2.5.1.1 Court's Responsibility

When the court interpreter has not had the opportunity of exploring communicative compatibility as provided in standard 1.2.5.1.0, the court shall permit the court interpreter to converse briefly with the client prior to proceeding further.

1.2.5.1.2 Counsel's Responsibility

Counsel shall advise the court interpreter of any special concerns he/she may have related to any peculiar linguistic characteristics the client may present or the substance of the case may include. For example, counsel should give court interpreters documents or other information pertaining to expert witness testimony that is of a highly technical nature.

1.2.6 Court Interpreters' Oath

1.2.6.0 Guideline

Witness and proceedings court interpreters shall serve only after having taken an oath or made an affirmation or declaration. Evid. R. 18; L. 1983, c. 864, §8.

1.2.6.1 When to Administer Oaths

1.2.6.1.0 The oath administered to full- or part-time court interpreters (see oath at standard 1.2.6.2) shall bind them throughout their employment by the Judiciary. Judges may administer an oath to such court interpreters prior to the outset of a proceeding, but are not encouraged to do so.

1.2.6.1.1 All other witness and proceedings court interpreters shall be sworn (see oath at standard 1.2.6.3) at the beginning of a case (in which instance the oath extends for the duration of that case) or at the beginning of a day's work (in which case the oath extends for the duration of the day's services).

1.2.6.2 Oath for Full- and Part-time, Official Court Interpreters and Legal Translators

The following oath shall be administered to all full- and part-time, official court interpreters and legal translators upon employment by the Judiciary and prior to rendering any services:

> On my word of honor, as official court interpreter [or legal translator] and officer of the Courts of New Jersey, I, ________________, swear [or affirm] to interpret accurately and impartially, using the modes of court interpretation defined by the STANDARDS ON COURT INTERPRETING, LEGAL TRANSLATING AND BILINGUAL SERVICES to be appropriate in each context, to be true to the Canons of Ethics, to follow all official guidelines for court interpreting and legal translating for the courts, and to discharge all of the solemn duties and obligations of court interpretation and translation. I will strive to improve my understanding and knowledge of legal concepts and terminology in English and in the language(s) I interpret, to improve my familiarity with procedures of the various courts, to improve my skills in speaking English and the language(s) in which I interpret, especially major dialectal variations of both languages; and to improve my theoretical and practical understanding of the disciplines of court interpreting and legal translating by reading the literature, participating in professional seminars or organizations, and attending training events.

1.2.6.3 Oath for All Other Witness and Proceedings Court Interpreters

The following oath shall be administered to all other witness and proceedings court interpreters pursuant to rule 1.2.6.1.1.:

> Do you solemnly swear [affirm] that throughout your service ["today" or "in this matter"] you will interpret accurately and impartially, using the modes of court interpretation defined by the STANDARDS ON COURT INTERRETING, LEGAL TRANSLATING AND BILINGUAL SERVICES to be appropriate to the context and abiding by the Canon of Ethics and all other approved standards?

1.2.7 Courtroom Decorum for Interpreted Proceedings

1.2.7.0 Recognizing the necessity for accurate and comprehensive court interpretation, extra care should be taken to maintain order and decorum (see Code of Judicial Conduct 3A[2.3]) by--

(A) Maintaining courtrooms that are as quiet as possible;
(B) Permitting only one person to speak at a time; and
(C) Speaking and regulating the speech of others at a rate of speed and volume of speech which can be accommodated by the court interpreter.

1.2.7.1 During actions involving consecutive court interpretation, judges should encourage speakers to make their questions and answers as simple and brief as possible, permitting witness court interpreters to use appropriate gestures to interrupt a speaker and permit interpretation as may be necessary.

1.2.7.2 Proceedings shall begin only after a court interpreter--

(A) Has been duly sworn, if required pursuant to standard 1.2.6; and
(B) Is positioned in the courtroom so as to assure proper communication.

1.2.8 Clarification of Interpreter's Role to Parties

1.2.8.0 Purpose

The purpose of this section is to ensure that clients and interested persons in the courtrooms understand the role of the court interpreter and to expedite interpreted proceedings.

1.2.8.1 Application

Any time it is determined that a court interpreter will be required to assist in any way, the presiding judicial officer shall advise the parties of the role and responsibilities of the court interpreter.

1.2.8.2 Notice to Defendants

The presiding judicial officer shall explain the role of a court interpreter prior to the outset of the proceedings. Here is a recommended text judges may follow.

> We are going to have official court interpreters help us through these proceedings and you should know what they can do and what they cannot do. Basically, court interpreters are here only to help us in the proceedings. They are not a party in this case, have no interest in this case, and will be completely neutral. Accordingly, they are working for neither [party A] or [party B]. The ofiicial' court interpreters' sole responsibility is to bridge our communication barrier.

> The official court interpreters are not lawyers and are prohibited from giving legal advice. They are not social workers and are prohibited from providing social assistance to you or anyone else. Their only job is to interpret, translate written documents and do sight translation. So please do not ask court interpreters for legal advice or social assistance.
>
> If you do not understand the court interpreter, please let me know. If the court interpreter leaves out much of what is going on, tell me that as well.
>
> Do you have any questions about the role or responsibilities of the court interpreter?

1.2.9 Clarification of Court Interpreter's Role to Witnesses

1.2.9.0 Purpose

The purpose of this section is to ensure that witnesses understand the role of a witness court interpreter and are enabled to render their testimony through the court interpreter completely, accurately and efficiently with the minimum discomfort and confusion possible.

1.2.9.1 Application

Any time it is determined that a court interpreter will be required to enable a witness to deliver testimony, the presiding judicial officer shall advise the witness of the role and responsibilities of the court interpreter after the witness is sworn and prior to the giving of any testimony.

1.2.9.2 Notice to Witness

The presiding judicial officer shall advise the witness of the role of the court interpreter. Here is a recommended text judges may follow.

> I want you to understand the role of the court interpreter. The court interpreter is here only to interpret the questions that an attorney or I ask you and to interpret your responses. The court interpreter will say only what we or you say and will not add to your testimony, omit anything you say, or merely summarize.
>
> If you do not understand the court interpreter, please say so immediately.

If you do not understand the question that was asked, ask the person who posed the question for a clarification of the question.

Remember that you are giving testimony to this court, not to the court interpreter. Therefore please speak directly to the attorney or me. Do not address your replies to the court interpreter. Do not seek advice from or talk to the court interpreter.

Please speak in a loud, clear voice so that the entire court and not just the court interpreter can hear. Source: Judicial Council of California, Standards of Judicial Administration, §18.1 (a)(2).

Finally, please do not formulate your answer to a question from counsel or me before you have heard the complete interpretation of the question in your language. Please await the full interpretation of the English before you reply.

Do you have any questions about the role or responsibilities of the court interpreter?

1.2.10 Clarification of the Role of Witness Court Interpreters to Jurors

1.2.10.1 Purpose

The purpose of this section is to ensure that jurors understand the role of the witness court interpreter and are enabled to receive and ponder evidence appropriately.

1.2.10.1 Application

Any time it is determined that a court interpreter will be required to enable a witness to deliver testimony, the presiding judicial officer shall advise the jurors of (1) the role and responsibilities of the court interpreter and (2) the nature of evidence taken through a court interpreter.

1.2.10.2 Notice to the Jurors

The presiding judicial officer shall instruct the jurors, in addition to other instructions, as follows:

(A) The court interpreter is an expert witness. Therefore you should treat the court interpretation rendered of the witness testimony as if the witness had spoken English and no court interpreter were present.

(B) Do not give any weight to the fact that testimony is given in a language other than

English. Do not allow the witness' inability to speak English to affect your view of the witness' credibility.

(C) If any of you understand the language of the witness, disregard completely what the witness says in the other language. Consider as evidence only what is provided by the court interpreter in English.

(D) [When the defendant requires a court interpreter] Do not attribute any prejudice to the fact that the defendant requires a court interpreter. This court seeks a fair trial of everyone regardless of the language they may speak. We will not permit bias against persons because they do not speak English. State v. Powers, 181 Iowa 452, 164 N.W. 856 (1917).

1.2.11 Jurors

1.2.11.0 Jurors shall not be permitted to interpret at any time during a proceeding.

1.2.11.1 "When there are sitting on the jury individuals who understand the language of the witness, they are to be instructed that it is the interpreted testimony in English that is evidence and not their own translations [sic--should be "interpretations"] of the witness' answer." Commonwealth v. Festa, 369 Mass. 419,429-430 (1976).

1.2.11.2 "Neither party has the right to have a juror excused solely because that juror understands the language of a witness. However, in certain circumstances the judge in his discretion may decide whether to excuse such a juror is appropriate." Commonwealth v. Festa, supra §1.2.11.1.

1.2.12 Admission of Statements of Limited English Proficient Persons

No answer, statement or admission, written or oral, made by a communicatively limited person in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that person unless either the statement was made or elicited through an approved interpreter and was made knowingly, voluntarily and intelligently, or in the case of a waiver of the interpreter's assistance, unless the court makes a special finding that any statement was made knowingly, voluntarily and intelligently. L. 1983, c. 564, §4(c)(2); Gilligan and Bryers, supra §1.0.3, at 263.

1.2.13 Record of Interpreted Testimony

1.2.13.0 Application

A permanent record of all interpreted testimony shall be made of both the original testimony and its interpretation--
(A) In all capital cases, regardless of the qualifications of the interpreters; or
(B) When interpretation is rendered by an unapproved interpreter.
In other instances the court, on its own motion or on a motion of a party, may order that a permanent record be made of original testimony and its interpretation.
Gilligan and Bryers, *supra* §1.0.3, at 265-266.

1.2.13.1 Means for Recording Verbal Testimony

If the original testimony is rendered by verbal means, the original testimony and the interpretation of questions posed to the witness shall be electronically tape recorded.

1.2.13.2 Means for Recording Other Testimony

If the original language is rendered by any other medium of communication (*e.g.*, sign language), the original testimony and the interpretation of questions posed to the witness shall be videotaped.

1.2.14 Errors of a Court Interpreter

1.2.14.0 This section recognizes that interpreting is an exacting profession and cannot be error-free. Nevertheless, the following precautions must be permitted in view of the importance of accuracy in the legal context. Respect for and appreciation of this reality shall be extended to the court interpreter during any allegations of inaccurate interpretation.

1.2.14.1 When the court interpreter discovers his or her own error, the court interpreter, if still at the stand, should correct the error at once, first identifying him/herself for the record. If the court interpreter realizes an error after the testimony has been completed, he or she should discretely request a bench or lobby conference with the judge and attorney(s) and make the correction on the record.

1.2.14.2 When an alleged error is detected by someone other than the court interpreter, that person should, if testimony is still being taken from the stand, bring the allegation to the attention of the court. At that time the court will determine first whether the issue surrounding the allegedly inaccurate interpretation is substantial enough to warrant determination. If the court agrees that the error could be prejudicial, then the court shall hear evidence as to what the correct interpretation should be from experts submitted by both counsel, from the court interpreter (who is already an expert witness), and from any other expert selected by the judge. The judge shall make a final determination in view of the evidence as to the correct interpretation. If the determination is different from the original interpretation, then the court shall amend the record accordingly.

1.2.14.3 A copy of the pertinent parts of the record shall be sent to the Administrative Office of the Courts within two weeks every time an error has been identified and corrected pursuant to standard 1.2.14.2.

1.2.15 Removal of Court Interpreter

1.2.15.0 A witness or proceedings court interpreter shall seek removal from service at any time during a proceeding or case when any of the following occur:

(A) A possible or real conflict of interest develops or is discovered;
(B) The court interpreter discovers a substantial inability to communicate effectively with the client for whom the service is being delivered, or
(C) The court interpreter finds that continued service would involve a violation of the Canon of Ethics. Gilligan and Bryers, "A Model Court Interpreters Act," 3 SETON HALL LEG. J. 254-257 (1978).

1.2.15.1 When a court interpreter petitions the court to be removed under one of the reasons listed in standard 1.2.15.0, the court shall grant the request unless it finds no grounds to substantiate the interpreter's request.

1.2.15.2 If during the course of a proceeding a motion is made that questions the integrity of a court interpreter's performance, a preliminary inquiry shall be held to determine the merits of the motion. If the court finds that reasonable cause for dismissing the court interpreter exists, the court shall immediately dismiss the court interpreter and secure the services of another. An objection to a court interpreter's performance must be made within a reasonable time from the discovery of the alleged cause of removal.

1.2.15.3 All motions and ensuing discussion shall be made on the record.

1.2.16 Waiver of Court Interpreters

1.2.16.0 A limited English proficient person may move to waive the assistance of a proceedings court interpreter. Said motion may be granted only when the presiding judicial officer--

(A) Has explained the nature and effect of the waiver through an approved court interpreter; and
(B) Is satisfied that the person is making the waiver knowingly and voluntarily, that the person has consulted with counsel (if any), and that the person will not thereby be deprived of any substantive rights. Gilligan and Bryers, supra §1.0.3, at 253-254. See Natividad, supra §1.1.18.

1.2.16.1 At any stage of any case or proceeding, upon good cause shown, a limited English proficient person may retract a waiver, request and receive the services of an approved proceedings court interpreter for the remainder of the case or proceeding.

1.2.16.2 No witness may refuse a court interpreter if either counsel or the court deems one to be necessary.

1.2.16.3 All deliberations in open court made on matters of waiver or retraction of waiver shall be made on the record.

1.2.17 Replacement of Official Court Interpreter

1.2.17.0 Replacement of Proceedings Court Interpreters

Any limited English proficient client entitled to a proceedings court interpreter may move to waive the services of such a court interpreter at any time. Said motion may be granted if each of the following conditions has been established on the record:

(A) The litigant will bear the responsibility for ensuring the appearance and remuneration of another court interpreter, or will proceed without any court interpreter; and

(B) The presiding judicial officer is satisfied that--
  (1) The proposed court interpreter meets the standards set forth in standard 1.2.3.3.1; and
  (2) Use of such court interpreter will not cause inordinate delay.

1.2.17.1 Replacement of Witness Court Interpreters

No party may replace an official witness court interpreter.

1.2.18 Demeanor of Court Interpreter During Proceedings

Court interpreters shall maintain a low profile, speak at volumes appropriate to the context, and be as unobtrusive as possible. The manner of dress, the positioning in the courtroom, and the style of work shall all contribute to maintaining a natural atmosphere in the courtroom such as there would be if no language barrier existed. The court interpreter shall be positioned in full view of and spatially situated to assure proper communication, but shall not block the view of the judge, jury or counsel. The court interpreter shall always be positioned so that the limited English proficient person can hear everything the court interpreter says, and so that the court interpreter can hear everything that is said during the proceedings. L. 1983, c. 564, §5.

1.2.19 Modes of Court Interpreting

1.2.19.0 Simultaneous Verbatim Mode

The simultaneous verbatim mode of court interpreting shall be used when a limited English proficient party is in the position of a third person vis-a-vis the proceedings. Accordingly, when testimony is being rendered by another witness, when the court is in dialog with an officer of the court or any person other than the party, or when the court is addressing the jury or gallery or any other persons present in the courtroom, the court interpreter shall interpret simultaneously such interchanges verbatim to the litigant. This shall be the normal mode for proceedings court interpreters.

1.2.19.1 Consecutive Verbatim Mode

The consecutive verbatim mode of court interpreting shall be used when a limited English proficient witness is giving testimony or when the judge or an officer of the court is in dialog with a limited English proficient client. This shall be the normal mode for witness court interpreters.

1.2.19.2 Summary Mode

The summary mode may be used only when trial testimony is being rendered by an expert witness whose testimony is so technical that the average person might not be able to understand it and when--
(A) A motion is made to allow this mode;
(B) Counsel for both parties consent; and
(C) The court is satisfied that the use of this mode will serve the interests of efficiency without sacrificing justice.

1.2.20 Interpreting for Criminal Defendants at Counsel Table

See generally Carreon, supra 1.1.8.

1.2.20.0 An official proceedings court interpreter shall interpret for criminal defendants at counsel table at all times. Ordinarily, the proceedings court interpreter will serve in addition to any witness court interpreter who may be required during a trial.

1.2.20.1 The proceedings court interpreter shall provide simultaneous, verbatim court interpretation, as far as is possible, of all open-court speech (e.g., questions, answers, court rulings, bench-counsel and counsel-counsel colloquy, etc.).

1.2.20.2 Defense Court Interpreting

A proceedings court interpreter may also serve as defense court interpreter, depending on the availability of a proceedings court interpreter and the discretion of the trial court, but is not required to do so. Otherwise, defense court interpreting shall be provided by a court interpreter supplied by defense counsel.

1.2.20.3 Multiple Defendants in the Same Trial

When two or more limited English proficient defendants who speak the same language are present at the same trial, court interpreting equipment should be used to provide simultaneous, verbatim court interpretation of the proceedings by only one (except as may be required by standard 1.2.23) proceedings court interpreter.

1.2.21 Language Difficulties in Witness Court Interpreting

A witness court interpreter should inform the court and seek its guidance when--

(A) A word, phrase or concept arises that the court interpreter does not know or understand, or is unable to interpret in either language;

(B) Counsel or the court use a word, phrase or concept that the court interpreter knows will confuse a limited English proficient witness (This will occur especially among deaf witnesses and witnesses whose native culture is unfamiliar with the word, phrase or concept.); or

(C) Counsel or the court use a word, phrase or concept for which there is no equivalent in the other language.

1.2.22 Non-Responsive Answers of Witnesses

When a witness' answer to a question does not respond to a question that was posed to the witness, the witness court interpreter shall render a consecutive verbatim court interpretation, leaving issues of admissibility of such response to the court and counsel.

1.2.23 Court Interpreter Fatigue

If a proceedings court interpreter believes that the quality of court interpretation is about to falter due to fatigue, the court interpreter shall inform the court. For any proceeding which will entail in excess of two hours of continuous simultaneous court interpretation, two court interpreters should be assigned so they can relieve each other at periodic intervals and prevent fatigue.

1.2.24 Court Interpreters as Witnesses

1.2.24.0 Court interpreters should be called as witnesses only when the accuracy of a court interpretation is disputed and the court interpreter may testify only with regard to that limited issue. When accuracy is challenged, the court shall follow the procedures set forth in standard 1.2.14.2.

1.2.24.1 Court interpreters shall not be permitted to testify regarding confidential or hearsay statements.

1.2.24.2 Court interpreters should not testify as to their recollection of what a given witness may have said.

1.2.25 Guidelines for Court Stenographers and Sound Recording Operators

1.2.25.0 The record shall include only the English court interpretation supplied by the witness court interpreter, except as provided by standard 1.2.25.1.

1.2.25.1 When a witness replies completely in English, the presiding judicial officer shall determine whether the English response shall go on the record.

1.2.25.2 When a witness replies partially in English, the witness court interpreter shall include the English portion of the phrase or phrases in the context of the complete response. Only the witness court interpreter's interpretation shall go on the record.

1.2.26 Judges' Use of Languages Other than English

1.2.26.0 Judges should use English at all times.

1.2.26.1 Judges should never function as court interpreter or legal translator.

1.2.26.2 Any judge who observes what is believed to be an inaccurate interpretation should question such allegedly incorrect interpretation and proceed according to standard 1.2.14.2.

1.2.27 Counsels' Use of Languages Other than English

1.2.27.0 Counsel shall use English during all proceedings at all times, except in confidential communication with clients.

1.2.27.1 Counsel who observe an allegedly inaccurate court interpretation should challenge such allegedly incorrect court interpretation and proceed according to standard 1.2.14.2.

1.2.28 Determination of Party's Comprehension of Proceedings

When a proceeding which involves a limited English proficient party concludes, the court shall inquire of the party on the record--
(A) Whether the party understands the results of the proceeding, especially any obligations that the court may have imposed upon the party; and
(B) Whether the party has any question, whereupon if there be questions, such questions should be permitted to be asked with appropriate responses given to the degree that the questions--
  (1) Are relevant to the proceedings; and
  (2) Do not impose a substantial cost on the efficiency of moving the calendar.

1.2.29 Depositions

In depositions taken for discovery purposes (R. 4:16-1), or for the purpose of perpetuating testimony (R. 3:13-2, 4.11), attorneys shall use an approved court interpreter or an approved legal translator as the case may be.

1.2.30 Foreign Language Documents Introduced into Evidence

1.2.30.0 Type of Translation

Any document in a foreign language which would be introduced into evidence must have been translated pursuant to the guidelines required under standard 1.8.3 by--
(A) An approved court interpreter; or
(B) An approved legal translator; or
(C) An official representative of a foreign government who has made an official translation.

1.2.30.1 Responsibility for Translation

The party who offers documents in foreign languages in evidence shall be responsible for securing a translation pursuant to standard 1.2.30.0 unless the court grants a request that the translation be made by an official court interpreter on the grounds of the petitioner's indigency.

1.3 CERTIFICATION AND QUALIFICATION OF COURT INTERPRETERS

1.3.0 The Administrative Director of the Courts shall prescribe the standards that shall determine the qualifications of persons who may serve as approved court interpreters in the courts or for any court service in the State of New Jersey.

1.3.1 Minimum Requirements for All Approved Court Interpreters

The minimum requirements for approved court interpreters shall include--

(A) Completing a minimum 18 college credits distributed among the following subjects of study: English and another language, theory and practice of translation, theory and practice of court interpretation, cross-cultural communication, substantive law, legal procedures and 90 hours of supervised practical experience;

(B) Passing a standard examination of legal concepts and procedures;

(C) Passing a standard examination of the Standards on Court Interpreting, Legal Translating and Bilingual Services in New Jersey, especially the Canons of Ethics; and

(D) Completing an orientation course sponsored by the Administrative Office of the Courts.

1.3.2 Minimum Requirements for Certified Court Interpreters in Foreign Languages

The minimum requirements for certifying foreign language court interpreters shall include the following in addition to the requirements presented in standard 1.3.1:

(A) Passing a language proficiency examination that validly measures reading, writing and speaking competence in English and the second language at the level of competence demonstrated by linguistic research to be the minimum level required for interpreting successfully;

(B) Passing an examination that validly measures competence in translating legal documents and related materials from the target language into English and from English into the target language; and

(C) Passing an examination that validly measures competence in interpreting in the simultaneous verbatim, consecutive verbatim and summary modes, as well as competence in performing sight translations, from the target language into English and from English ito the target language.

Sections A and C shall be waived upon presentation of proof of certification as a court interpreter by the Administrative Office of the United States Courts.

1.3.3 Minimum Requirements for Eligible Court Interpreters in Foreign Languages

The minimum requirements for eligible court interpreters shall include the following in addition to the requirements presented in standard 1.3.1:

(A) Passing a language proficiency examination that validly measures reading, writing and speaking competence in English and the second language at the level of competence demonstrated by linguistic research to be the minimum level required for interpreting successfully;
(B) Passing a screening test that assesses competence in translating legal documents from the target language into English and from English into the target language; and
(C) Passing a screening test that assesses competence in interpreting in the simultaneous verbatim, consecutive verbatim and summary modes, as well as competence in sight translation, from the target language into English and from English into the target language.

1.3.4 Minimum Requirements for Qualifying Court Interpreters in Foreign Languages

The minimum requirements for qualificing foreign language court interpreters shall include the following in addition to the requirements presented in standard 1.3.1:

(A) Passing a screening test of language proficiency that assesses competence in reading, writing and speaking English and the second language;
(B) Passing a screening test that assesses competence in translating legal documents from the target language into English and from English into the target language; and
(C) Passing a screening test that assesses competence in interpreting in the simultaneous verbatim, consecutive verbatim and summary modes, as well as competence in sight translation, from the target language into English and from English into the target language.

1.3.5 Certifying Court Interpreters in Sign Language

The minimum requirements for certifying sign language court interpreters shall include the requirements presented under standard 1.3.1., and possession of the Comprehensive Skills Certificate administered by the National Registry of Interpreters for the Deaf, Inc. (or the closest equivalent once the new standards presently being designed by the RID are established).

1.3.6 Evaluation of Approved Court Interpreters

1.3.6.0 Evaluation of Full- and Part-time Court Interpreters

Each full- or part-time court interpreter shall be evaluated at least twice annually. These evaluations shall also include--
(A) Feedback to each court interpreter and supervisor; and
(B) Recommendations as to rewards and/or discipline. Unsatisfactory evaluations may result in dismissal, removal from the list of certified and qualified court interpreters (see standard 1.9.11), or both.

1.3.6.1 Evaluation of Approved Free-lance Court Interpreters

Approved free-lance court interpreters shall be formally evaluated at least once annually to determine whether they should remain on the official list (see standard 1.9.11) of approved court interpreters.

1.3.7 Standards for Evaluation and Removal of Court Interpreters from Lists

The Administrative Office of the Courts shall establish standards for evaluating court interpreters and for removing persons from the lists (see standard 1.9.11), including adequate provision for protecting the rights of such court interpreters.

1.4 CERTIFICATION AND QUALIFICATION OF LEGAL TRANSLATORS

1.4.0 The Administrative Director shall prescribe the standards that determine the qualifications of persons who may serve as legal translators in the courts or for any court service in the State of New Jersey.

1.4.1 Minimum Requirements for All Approved Legal Translators

The minimum requirements for all approved legal translators shall include--

(A) Completing a minimum of twelve college credits in the theory and practice of translation, cross-cultural communication, substantive law, legal procedures and supervised practical experience; and

(B) Passing a standard examination of the the Canons of Ethics and the standards for preparing legal translations (standards 1.5 and 1.8.3. respectively).

1.4.2 Minimum Requirements for Certified Legal Translators

The minimum requirements for certifying legal translators shall include the following in addition to the requirements presented in standard 1.4.1:

(A) Passing an examination that validly measures competence in translating legal documents and related materials from the target language into English and from English into the target language.

1.4.3 Minimum Requirements for Eligible Legal Translators

The minimum requirements for eligible legal translators shall include the following in addition to the requirements presented in standard 1.4.1:

(A) Passing a screening test that assesses competence in translating legal documents from the target language into English and from English into the target language.

1.4.4 Anyone who is a certified court interpreter shall be deemed to be a certified legal translator and anyone who is an eligible or qualifying court interpreter shall be deemed to be an eligible legal translator.

1.5 CANONS OF ETHICS FOR COURT INTERPRETERS AND LEGAL TRANSLATORS

1.5.0 Introduction

These canons of ethics shall be binding upon all persons who interpret or translate in or for any grand jury, Municipal, Superior or Tax Court or for any support service of the Judiciary of the State of New Jersey. The purposes of these canons of ethics are to upgrade the professional quality of these services and, thereby, support the administration of justice and promote the public's confidence in the Judiciary's ability to administer justice for all persons.

1.5.1 Canon 1

A court interpreter or legal translator, as an arm of the court, shall maintain high standards of personal and professional conduct that promote public confidence in the administration of justice.

1.5.2 Canon 2

A court interpreter or legal translator shall know and observe all standards which govern professional performance.

1.5.3 Canon 3

A court interpreter or legal translator shall use the level of communication that best conveys the meaning of the source. A court interpreter or legal translator shall not interject his or her own personal moods or attitudes.

1.5.4 Canon 4

When a court interpreter or legal translator has reservations about her or his ability to fully satisfy an assignment, the court interpreter or legal translator shall immediately convey said reservation to the parties and to the court.

1.5.5 Canon 5

With respect to criminal causes, a court interpreter or legal translator who has performed professionally in the case for either side prior to a court proceeding shall not also interpret for that case in any court proceeding thereafter during the pendency of that cause.

1.5.6 Canon 6

No court interpreter or legal translator shall render services in any matter in which he or she is an associate, friend or relative of a contending party. Neither shall she or he serve in any matter in which one has a stake, financial or otherwise, in the outcome. Nor shall any court interpreter or legal translator serve in a matter where he or she has been involved in the choice of counsel.

1.5.7 Canon 7

No court interpreter or legal translator shall discuss or report upon a matter in which he or she is engaged with any person, except in one's official capacity. Accordingly, no court interpreter or legal translator shall fraternize with parties, witnesses, jurors, attorneys, friends or relatives of any party during the pendency of any cause in which he or she is engaged, except as required in the discharge of official functions.

1.5.8 Canon 8

No court interpreter or legal translator shall communicate to anybody at any time information which has been obtained in the course of his or her duties and which has not been made public, including Grand Jury proceedings and all confidential communications (e.g., counsel and client, DR4-101; Evid. R. 26; psychologist and client, Evid. R. 26A-1 et seq.; and others).

1.5.9 Canon 9

No court interpreter or legal translator shall comment or render an opinion on the propriety or impropriety of a verdict in any matter in which he or she has served. Nor shall any court interpreter or legal translator comment upon the conduct of such proceedings.

1.5.10 Canon 10

A court interpreter or legal translator shall report immediately to the judge presiding in the case any solicitation or effort by another to induce or encourage him or her to violate any law, any provision of the rules governing the practice of court interpreters, or any provision of these canons of ethics.

1.5.11 Canon 11

A court interpreter or legal translator shall, in any jury trial, disclose to the court and contending parties all instances in which he or she is acquainted with any juror and shall disclose the extent of such knowledge.

1.5.12 Canon 12

The fees and remuneration of a court interpreter or legal translator shall never be contingent upon the success or failure of the cause in which she or he has been engaged.

1.5.13 Canon 13

Once having accepted or undertaken an assignment in any court, a court interpreter or legal translator shall strive to be prompt in arriving in the courtroom or other place where services are to be rendered, or in completing the translation. When an unforeseeable or unavoidable event prevents fulfillment of such obligation, the court interpreter or legal translator shall report his or her inability to arrive promptly or not at all, or to complete the translation as agreed, to the appropriate person at the earliest opportunity.

1.5.14 Canon 14

All court interpreters and legal translators are bound by the rules governing the practice of law and shall, accordingly, refrain from the unauthorized practice of law. R. 1:21,22.

1.5.15 When a court interpreter violates any of the provisions of these canons of ethics, he or she is subject to the charge of contempt in addition to any other sanction that may be imposed by law.

Sources Consulted:

The American Association of Language Specialists, PROFESSIONAL CODE FOR LANGUAGE SPECIALISTS; American Society of Interpreters, CODE OF PROFESSIONAL STANDARDS; American Translators Association, CODE OF ETHICAL PRACTICES AND PROFESSIONAL RIGHTS; California Court Interpreters Association, CODE OF ETHICS; Court Interpreters and Translators Association, PROFESSIONAL CODE FOR INTERPRETERS; International Association of Conference Interpreters, CODE OF PROFESSIONAL CONDUCT; International Association of Conference Translators, PROFESSIONAL CODE; International Federation of Translators, CODE OF ETHICAL PRACTICES AND PROFESSIONAL RIGHTS; Judicial Council of California, A REPORT TO THE JUDICIAL COUNCIL ON THE LANGUAGE NEEDS OF NON-ENGLISH SPEAKING PERSONS IN RELATION TO THE STATE'S JUSTICE SYSTEM. INTERIM REPORT OF ADVISORY COMMITTEE AND PHASE II REPORT, PROVISION OF COURT INTERPRETING SERVICES. AN OVERVIEW. Appendix B: "Suggested Court Interpreter's Rules of Conduct"; LOS ANGELES SUPERIOR COURT INTERPRETERS MANUAL, "Code of Ethics"; National Shorthand Reporters Association, CODE OF PROFESSIONAL RESPONSIBILITY;, Registry of Interpreters for the Deaf, CODE OF ETHICS; United States Courts, CODE OF ETHICS FOR OFFICIAL COURT INTERPRETERS (by Louis F. Marquez); Stanley B. Yeldell, "Ethical Behavior Policies," in GUIDE TO NEW JERSEY COURTS AND RELATED DEPARTMENTS IN USE OF BILINGUAL COURT INTERPRETERS; Stanley B. Yeldell, "Ethical Behavior" in THE HANDBOOK OF STANDARDS FOR BILINGUAL COURT INTERPRETERS IN NEW JERSEY.

1.6 QUALIFICATIONS OF BILINGUAL AND BILINGUAL/MULTICULTURAL PUBLIC CONTACT AND DIRECT SERVICE EMPLOYEES

1.6.0 Prescription of Qualifications

The Administrative Director of the Courts shall prescribe, determine and certify the qualifications of persons who may serve in bilingual and bilingual/multicultural public contact and direct service positions

1.6.1 Qualifications for Bilingual Positions

The minimum requirements for persons filling these positions shall include--

(A) Meeting all minimum qualifications for the given position for non-bilingual employees; and

(B) Demonstrating a minimum level of linguistic competence determined by the Administrative Office of the Courts in reading, writing and/or speaking both English and the second language as is appropriate for each particular position.

1.6.2 Qualifications for Bilingual/Multicultural Positions

The minimum requirements for persons filling these positions shall include--

(A) Meeting all the minimum qualifications for the given position for non-bilingual/multicultural employees;

(B) Demonstrating the minimum level of linguistic competence determined by the Administrative Office of the Courts in reading, writing and/or speaking both English and the second language as is appropriate for each particular position; and

(C) Demonstrating the minimum level of multicultural competence and cultural fluency determined by the Administrative Office of the Courts as is appropriate for each particular position.

1.7 STANDARDS FOR PROMOTING EQUAL ACCESS FOR LIMITED ENGLISH PROFICIENT PERSONS TO THE COURTS AND THEIR SERVICES

1.7.0 Scope

This section is designed to enable limited English proficient persons to have equal access to and receive the same level of services from the courts as are available to English-speaking persons seeking access to or receiving such services.

1.7.1 Notice to Parties of Availability of Interpreter

All summonses shall include the following text in English and any additional languages determined by the Administrative Director of the Courts for statewide use or a trial court administrator for local or regional use:

> You are entitled to a court interpreter if you cannot understand English or speak English effectively. If you will need a court interpreter when you come to court, you must:
> (1) Write the name of the language for which you will need a court interpreter:
> Language ______________________
> (2) Return this form to [fill in approriate address].
> NOTE: If you have any questions about court interpreters, call [insert telephone number].

Alfonso v. Board of Review, 89 N.J. 41 (1982).

1.7.2 Calendar Call

When a court knows that individual clients who are limited English proficient may be present or when a court serves clientele of which 5% or more are limited English proficient, the judge or clerk shall routinely take extra precautions, which must be approved by the Assignment Judge, to determine that all persons in the courtroom are aware they are required to respond during calendar roll calls.

1.7.3 Signs in Courthouses and Courtrooms

When a courthouse or courtroom has English signs, the signs shall also be posted in each additional language which is spoken by 5% or more of the court's clients.

1.7.4 Documents Explaining Certain Proceedings to Pro Se Litigants

When a Municipal Court or the Superior Court in a county has prepared English documents which are designed to help pro se litigants function efficiently in those courts, the documents shall also be made available in each additional language which is spoken by 5% or more of the clients served by the court or county.

1.7.5 "Your Rights in Municipal Courts"

When Municipal Courts post a copy of "Your Rights in the Municipal Courts of the State of New Jersey" outside the entrance to their courtrooms or place copies on the seats of the courtrooms to assist in the orderly processing of cases, copies shall also be posted or placed in the seats in each additional language which is spoken by 5% or more of the clients served by the court. Municipal Court Bulletin Letter #5/6-77, at 3.

1.7.6 Processing Forms in Other Languages

1.7.6.0 Translation of Processing Forms

All processing forms shall be translated pursuant to standard 1.8.4 into each additional language which is spoken by 5% or more of the clients using such forms in one or more counties or in one or more Municipal Courts.

1.7.6.1 When a court officer is processing a client who is limited English proficient and when the appropriate form(s) have been translated into the language of the client, the court officer shall make both forms available to the client and give him or her the choice of using either the English or the foreign language version of the form.

1.7.7 Investigations

1.7.7.0 Every investigation prepared by an employee of the Judiciary or an outside provider of support services at the official request of any judicial employee which involves a limited English proficient client shall be performed by the most available bilingual/multicultural person who is most familiar with the client's language and culture.

1.7.7.1 If the investigative report being prepared may result in a disposition, sentence or other court action which involves a period of supervision or other form of court monitoring/control by some officer of the court, the author of the investigative report shall recommend--

(A) Whether the anticipated supervision should be provided by a bilingual/multicultural direct service employee; and

(B) Any linguistically and culturally relevant support services that should be drawn upon on behalf of and with the cooperation of the client.

1.7.8 Supervision/Case Control

1.7.8.0 When an investigative report recommends that the supervision of a client be provided by a bilingual/multicultural direct service employee, the client should be supervised by the bilingual/multicultural employee whose expertise best matches the language and culture of the client.

1.7.8.1 Support Services Provided by Non-judicial Agencies

The Judiciary should appropriate services for limited English proficient clients from external support agencies that are rendered by bilingual/multicultural professional personnel, seeking the most linguistically and culturally fluent, relevant and sensitive support services available.

1.7.8.2 Use of Community Resources

The supervision of limited English proficient clients shall draw upon, where appropriate, community resources of the person's linguistic and cultural group, including especially volunteer assistance, employment, health care, education and recreation.

1.7.9 Diagnostic and Therapeutic Services

1.7.9.0 Application

This section applies to all diagnostic and therapeutic services delivered by psychologists, psychiatrists, medical doctors, social workers, rehabilitators of drug dependent persons, and related professionals to limited English proficient persons who are under the care of the Judiciary.

1.7.9.1 Guidelines

Services sought from the professionals included in standard 1.7.9.0 shall be sought according to the following priorities:

(A) First, the service provider should speak the limited English proficient person's language and should be fluent in the person's culture.

(B) Second, if the service provider is not bilingual and multicultural, the service provider should--
  (1) Demonstrate awareness of the inherent difficulties in the cross-cultural delivery of such services;
  (2) Have a general understanding of and respect the specific client's cultural values and norms; and

(C) Third, if the service provider knows little or nothing about the client's language or culture, the service provider should be generally culturally fluent.

(D) Only as a last resort should a support service be used which does not have staff with the preferred expertise identified in A-C above or makes inadequate attempts to abide by these guidelines.

1.7.9.2 Use of Interpreters by Providers of Diagnostic and Therapeutic Services

1.7.9.2.0 When a diagnostic or therapeutic service provider must rely on an interpreter to communicate with a client, the service provider should use only interpreters whose qualifications are equivalent to those of court interpreters certified by the State Board of Court Interpreting and Legal Translating.

1.7.9.2.1 Children and other relatives should never be used for interpreters.

1.7.9.2.2 Bilingual personnel whose qualifications have not been ratified by the State Board of Court Interpreting and Legal Translating should be used to interpret only as a last resort.

1.7.9.2.3 Standardized tests should not be administered through an interpreter.

1.7.9.2.4 When a diagnostic or therapeutic service provider needs but cannot supply an interpreter, an approved court interpreter should be provided by the Judiciary.

1.7.9.3 Use of Standardized Tests by Diagnostic and Therapeutic Service Providers

1.7.9.3.0 Generally, only tests standardized on or known to be valid for a specific linguistic/cultural minority should be relied upon when serving a limited English proficient client.

1.7.9.3.1 These service providers shall indicate in their reports to the Judiciary--

(A) Whether the tests they have used are known to be valid for the type of client being served;

(B) To what degree the absence of such validation may affect the findings and recommendations in each specific instance;

(C) Whether an interpreter was used to administer the tests; and

(D) If an interpreter was used, the qualifications of the interpreter.

1.7.10 Notice of Services Available

All limited English proficient clients shall be advised in language they can understand of the range and types court interpreting, bilingual and bilingual/multicultural services that are available to them when seeking or receiving a service of the Judiciary.

1.7.11 Notice of Means for Filing Complaints

All limited English proficient clients shall be notified of the means by which they may file a complaint alleging absence of a court interpreting, bilingual or bilingual/multicultural service required by these rules or alleging the rendering of such services in a manner that is inconsistent with the goals or a specific element of these rules, especially the Canons of Ethics. See standards 1.0.3, 1.7.10 and 1.9.18.

1.7.12 Sufficient Number of Court Interpreters

Each vicinage or region shall document the number of full- or part-time court interpreters needed based on work load formula, including provisions for obtaining per diem court interpreters when necessary, and maintain sufficient full- and part-time court interpreters to satisfy at least 75% of all court interpreting requirements.

1.7.13 Sufficient Number of Bilingual Personnel in Public Contact Positions

When the public contact positions of a Municipal Court, a part of the Superior Court within a county, a Tax Court, a court support service within a county, or the Administrative Office of the Courts, serve a substantial number of limited English proficient clients, the court or office shall employ a sufficient number of qualified bilingual persons in each type of public contact position to provide the same level of services to these persons as is available to English-speaking persons. One or more bilingual employees should be maintained for each language which is spoken by 5% or more of the clients served by the Municipal Court, a part of the Superior Court within the given county, a Tax Court, or the court support service of a county, the actual number of bilingual employees being determined according to an analysis of work load for each language group. See standard 1.9.6. California Government Code §§7292, 7296.2 and 7296.4.

1.7.14 Sufficient Number of Bilingual/Multicultural Personnel in Direct Service Positions

When court support services are provided by direct service positions to a substantial number of limited English proficient clients, a sufficient number of qualified bilingual/multicultural persons shall be employed in each type of direct service position to provide the same level of services to these persons as is available to English-speaking persons. Bilingual/multicultural employees should be maintained for each language which is spoken by 5% or more of the clients served by the Municipal Court, a part of the Superior Court within the given county, a Tax Court, the court support service of a county, or the Administrative Office of the Courts, the actual number of bilingual/multicultural employees being determined according to an analysis of work load of each language group. Bilingual/multicultural employees may be maintained on a regional basis when the 5% minimum can be attained only on a multi-county basis. See standard 1.9.6.

1.8 STANDARDS FOR PREPARING LEGAL TRANSLATIONS

1.8.0 Official Translations of Official Documents/Forms

All official translations of official documents, forms and signs shall be prepared or approved by the Administrative Office of the Courts prior to promulgation and use and shall be translated in accordance with standard 1.8.3.

1.8.1 Official Translations of Other Documents

Documents such as letters to judges shall be translated by an approved court interpreter or legal translator.

1.8.2 Languages Authorized for Translations of Official Documents/Forms

All forms and documents prepared for statewide use which are intended primarily for processing cases shall be translated into such other languages as are deemed necessary by the Administrative Office of the Courts and shall be made available to all courts and court support services as applicable. Alfonso, supra §1.7.1.

1.8.3 Standards for Preparing Legal Translations

The Administrative Office of the Courts shall prepare and publish standards that shall govern the preparation of translations of official court documents, signs, other documents, and foreign language documents introduced into evidence (see standard 1.2.31).

1.8.4 Steps in Preparing Translations of Official Documents/Forms

The following steps shall be taken in preparing translations of all official documents/forms:

(A) Assign the document to the Court Interpreting, Legal Translating and Bilingual Services Section of the Administrative Office of the Courts;

(B) The Section assigns the document to an approved legal translator who prepares a first translation pursuant to the standards promulgated under standard 1.8.3 and any special instructions given by the Section;

(C) The quality of the translation is checked by a second approved legal translator;

(D) The draft is field-tested to determine readability. Such test shall be administered to a sample of persons representative of major groups of persons in New Jersey who are from countries or regions where variations of the language are spoken. The aim shall be to ensure that all will be able to read the document regardless of national origin, if possible. If a formal pretest is not feasible, an informal test shall be conducted with a small number of potential users;

(E) In consultation with the two approved translators who prepared the translation, the Section will review and edit the document, assuring that changes necessitated by the assessment of readability do not compromise the integrity of the translation. Step E should be repeated if considerable changes have been required on the basis of the field test;

(F) The Section will prepare the document for printing using all orthographic characters and conventions of the foreign language; and

(G) Print and promulgate for use.

1.8.5 Clarifying Remarks in the Translated Version

Any time the Court Interpreting, Legal Translating and Bilingual Services Section concludes that a document/form will be substantially less effective if no clarifying remarks are attached, the Section shall consult with the persons principally responsible for the content of the English version. Where all principal parties involved in the preparation of the English version agree, certain explanatory or clarifying remarks may be added to the foreign language version in order to promote additional readability, comprehension and understanding. This shall be encouraged especially when the document directs the reader to certain actions for which he or she will be responsible (*e.g.*, conditions of bail and probation).

1.8.6 Effect on Existing Translated Official Documents

Existing translated official documents shall be evaluated to see if they conform to the standards herein promulgated. Where the documents are not in conformance, they shall be retranslated pursuant to standard 1.8.4.

1.9 ADMINISTRATION AND ORGANIZATION OF COURT INTERPRETING, LEGAL TRANSLATING AND OTHER BILINGUAL SERVICES

1.9.0 Scope

This section provides for the uniform, comprehensive and systematic administration of court interpreting, legal translating and other bilingual services for the Judiciary.

1.9.1 Court Interpreting, Legal Translating and Bilingual Services Section

1.9.1.0 Creation

The Administrative Director of the Courts shall create and maintain a section in the Administrative Office of the Courts called the Court Interpreting, Legal Translating and Bilingual Services Section.

1.9.1.1 Duties

The duties of this Section shall include:

(A) Advise the Chief Justice, the Administrative Director of the Courts and other judicial administrators on linguistic matters affecting the administration of justice and the services of court interpretation, legal translation and bilingual delivery of services;

(B) Coordinate initial and ongoing training for court interpreters, bilingual, or bilingual/multicultural judicial personnel, judges, stenographers, operators of sound recording equipment, and clerks;

(C) Facilitate the professional development of court interpreters, translators, bilingual, and bilingual/multicultural judicial personnel;

(D) Develop, implement and maintain a system for evaluating court interpreters, bilingual, and bilingual/multicultural judicial personnel;

(E) Establish and monitor compliance with standards for recruiting and hiring court interpreters, bilingual, and bilingual/multicultural judicial personnel;

(F) Document the number and nature of services rendered by court interpreters, bilingual, or bilingual/multicultural judicial personnel;

(G) Create, update regularly and promulgate lists of approved court interpreters, legal translators and providers of human services whose expertise includes demonstrated cultural fluency;

(H) Coordinate the preparation, promulgation and maintenance of policy manuals, tools required by these standards (see, *e.g.*, standards 1.2.4.1, 1.8.3, 1.9.3.6, 1.9.4.2, 1.9.11, and 1.9.18);

(I) In cooperation with Assignment Judges and Trial Court Administrators, oversee compliance with all Supreme Court policy on court interpretation, legal translation and other bilingual services;

(J) Facilitate the preparation of English forms and documents designed for promulgation statewide so they are written in easily translatable English and secure accurate translations of these documents into other languages as may be justified;
(K) Conduct work load assessments for allocating court interpreters and other bilingual and bilingual/multicultural judicial personnel around the state;
(L) Coordinate research efforts that identify deficiencies of services rendered to linguistic minority clients that are due to language, recommending remedial courses of action to the Administrative Director of the Courts;
(M) Serve as a clearinghouse of information for limited English proficient persons, including deaf persons (e.g., TTD/TTY capability);
(N) Acquire, maintain and coordinate the use of court interpreting equipment to be used in proceedings involving multiple parties who are limited English proficient;
(O) Chair meetings at least annually of other bilingual and multicultural judicial employees in order to--
    (1) Share information;
    (2) Explore problems and concerns of staff;
    (3) Provide training; and
    (4) Coordinate efficient and effective delivery of services to limited English speaking clients; and
(P) Monitor related professional and research literature in order to keep abreast of resources for policy development, training and professional advancement.

1.9.2 Advisory Board

1.9.2.0 Creation and Functions

The Chief Justice shall create and maintain an advisory board to evaluate existing policies and services, recommend changes in policies and services, develop manuals of policy, procedures or standards, and monitor the implementation and maintenance of services for limited English proficient clients. The advisory board may perform other tasks as assigned by the Chief Justice, the Supreme Court or the Administrative Director of the Courts.

1.9.2.1 Members

The Chief Justice shall appoint at least the following kinds of persons to serve on this board:
(A) Professional affiliations and number of persons for each group:
    (1) Official, full-time foreign language court interpreter (1);
    (2) Certified court interpreter for deaf persons (1);
    (3) Approved free-lance foreign language court interpreter (1);
    (4) Professor of Linguistics (preferably with specialization in sociolinguistics) (1);
    (5) Professor with academic expertise in theory and practice of court interpretation (1);

(6) Professor with academic expertise in theory and practice of legal translation (1);
(7) Representative of the New Jersey Registry of Interpreters for the Deaf or the New Jersey Association for the Deaf (1);
(8) Professor of cultural anthropology (preferably with specialization in cross-cultural communication) (1);
(9) Judges (one each from Criminal and Special Civil Parts of the Law Division, one from the Family Part of the Chancery Division, one judge from a Municipal Court, and one other judge from any given court) (5);
(10) Attorney in private practice (2);
(11) Representative of the Public Defender (1);
(12) Representative of Legal Services (1);
(13) Representative of the Attorney General (1);
(14) Bilingual/multicultural direct service professional Judicial employee (1);
(15) Counselor in a Juvenile-Family Crisis Intervention Unit (1);
(16) Representative of the New Jersey Ethnic Advisory Council (1);
(17) Bilingual psychologist or psychiatrist (1);
(18) Chief Probation Officer (1);
(19) Trial Court Administrator (1); and
(20) Administrative Director of the Courts (1)

(B) The persons appointed to the advisory board shall be as representative as possible of the state's population in terms of--
  (1) Geography; and
  (2) Linguistic groups.

1.9.2.2 Secretary

The head of the Court Interpreting, Legal Translating and Bilingual Services Section shall serve as ex-officio secretary of the advisory board.

1.9.3 Responsibility for Supplying Court Interpreters

This standard relies generally on Gilligan and Bryers, supra §1.0.3, at 257-259.

1.9.3.0 Introduction

In this section the word "supply" shall mean--
(A) Locating and ensuring the presence of the most qualified available approved court interpreter given the language of the person for whom the service is required;
(B) Paying all costs incurred by providing the court interpreter.

1.9.3.1 Witness and Proceedings Court Interpreters

All witness and proceedings court interpreters, regardless of the language or type of proceeding involved, shall be supplied by the court in which the witness testifies.

1.9.3.2 Clients Who Are Hearing Impaired

The court in which a hearing-impaired person has appeared as a party entitled to a court interpreter shall supply a defense court interpreter and a proceedings court interpreter as may be required by the case. L. 1983, c. 564, §4.

1.9.3.3 Clients Who Speak Foreign Languages

The court in which the proceeding occurs shall supply proceedings court interpreters when--

(A) The party is indigent;
(B) The party is a defendant in any action brought by the State of New Jersey; or
(C) There is evidence that the limited English speaking client's access to the court might be hindered or the outcome of the case may be prejudiced if obligated to supply an approved court interpreter.

1.9.3.4 Defense Interpreters

Except as required by standards 1.9.3.2 or 1.9.3.3 or applied in a specific case under standard 1.9.3.3, defense counsel shall be responsible for supplying defense interpreters.

1.9.3.5 Party Interpreters

Except as required by standards 1.9.3.2 or 1.9.3.3 or applied in a specific case under standard 1.9.3.3, party interpreters shall be supplied by the parties and not by the court.

1.9.3.6 When Costs May Be Assessed

When any official court interpreter (witness or proceedings) has been supplied by the court in a civil case for which costs or counsel fees are allowable per R. 4.42-8,9, by statute, or by any other authority, a portion or all of the cost of supplying court interpreting services may be assessed as costs by the presiding judicial officer according to uniform rates approved and promulgated by the Administrative Director of the Courts.

1.9.3.7 Court Budgets

The respective courts and court agencies shall include within their budgets provision for covering the costs of providing court interpreters pursuant to standards 1.7.12 and 1.9.4, and administering their services pursuant to standard 1.9.9.

1.9.4 **Employment of Persons as Official Court Interpreters**

1.9.4.0 **Establishment of Titles with Career Ladder**

The Administrative Office of the Courts shall establish a series of Court Interpreter titles to be used at Superior and Municipal Court levels in order to provide a career ladder for court interpreters.

1.9.4.1 **Qualifications of Official Court Interpreters**

Persons hired under these titles must have been certified, if certification in the particular language is available, or qualified, if certification is not available in the particular language, pursuant to standard 1.3.

1.9.4.2 **Recruitment and Appointment**

Official court interpreters shall be recruited and appointed according to published procedures established by the Administrative Office of the Courts and shall be employed in the unclassified service.

1.9.4.3 **Salaries**

Staff court interpreters shall be compensated by salaries commensurate with the high degree of skill and critical significance of the services rendered according to a uniform schedule of compensation fixed by the Supreme Court.

1.9.5 **Employment of Persons in Bilingual and Bilingual/Multicultural Positions**

1.9.5.0 **Establishment of Titles**

The Administrative Director of the Courts and the Assignment Judges shall establish bilingual and bilingual/multicultural titles for all direct service and all public contact positions.

1.9.5.1 **Qualifications for Bilingual and Bilingual/Multicultural Positions**

Persons to be hired under bilingual and bilingual/multicultural positions must have demonstrated possession of the minimum qualifications required under standard 1.6.

1.9.5.2 **Salaries**

Persons in bilingual positions shall begin at least one step above the minimum salary within the title's range while persons in bilingual/multicultural positions shall begin at least two steps above the minimum salary within the title's range.

1.9.5.3 Career Advancement of Bilingual and Bilingual/Multicultural Staff

Bilingual and bilingual/multicultural personnel should have the same opportunities and rights to lateral or upward mobility within their professions as do other employees in the same title.

1.9.6 Documentation of Work Load

The Administrative Director of the Courts and each Trial Court Administrator shall annually document for each Municipal Court, Superior Court, Tax Court, court support office and administrative sections--

(A) The total number of public contact positions in each court or office and the total number of bilingual public contact positions within the total number;
(B) The total number of direct service positions in each court or office and the total number of bilingual/multicultural direct service positions within the total number;
(C) The total number and percentage of limited English proficient persons served by each court and office, broken down by language; and
(D) The total number of proceedings in each court and the total number of proceedings which require court interpreters, broken down by language.

See related standards 1.7.13 and 1.7.14.

1.9.7 Annual Plans from the Vicinages

Each vicinage shall annually report to the Administrative Director of the Courts--

(A) The statistics required under standards 1.9.6 and 1.9.14;
(B) An evaluation of compliance with the guidelines required under standards 1.7.12-1.7.14; and
(C) Plans for remedying any failures to meet the guidelines implied in (B).

1.9.8 Annual Plan for the Administrative Office of the Courts

The head of the Court Interpreting, Legal Translating and Bilingual Services Section shall annually report to the Administrative Director of the Courts--

(A) An evaluation of the agency's compliance with the standards required under standards 1.7.12-1.7.14; and
(B) Plans for remedying any failures to meet the guidelines implied in (A).

1.9.9 Organization of Court Interpreting Services

1.9.9.0 Regional Basis

Interpreting services shall be organized on a regional basis. The Administrative Director of the Courts shall assign official court interpreters to each region.

1.9.9.1 Administration of the Region

The Administrative Director of the Courts, in consultation with all Assignment Judges within the region, shall designate one official court interpreter to supervise interpreting services per region. The Court Interpreter I, in collaboration with the Trial Court Administrator(s) and under the supervision of the Assignment Judge(s), shall coordinate interpreting services for the region, being responsible for assigning court interpreters to cases within that region, assisting other Court Interpreter I's in cross-regional sharing of court interpreting resources, and processing vouchers for services rendered by free-lance interpreters.

1.9.9.2 Cross-Regional Sharing of Court Interpreters

This administrative structure is designed to permit the greatest flexibility in assigning full-time court interpreters to the courts where they are needed. When the work load in a neighboring region exceeds the region's ability to meet the needs, court interpreters may be temporarily transferred as available from neighboring regions to meet such needs on an ad hoc basis.

1.9.9.3 Languages

1.9.9.3.0 Each region shall have at least one full-time court interpreter for the dominant minority language group in the region.

1.9.9.3.1 Official court interpreters may be retained on a regional or statewide basis as the work load for each language so justifies.

1.9.10 Scheduling Cases Involving Interpreters

1.9.10.0 Priority

Cases involving a court interpreter shall be heard according to the schedule that makes the most efficient use of intepreting resources without conflicting with other priorities.

1.9.10.1 Use of Official Court Interpreters

Proceedings which involve languages for which official court interpreters are available shall be scheduled, to the maximum extent possible, to permit the attendance of an official court interpreter.

1.9.10.2 Use of Free-Lance Court Interpreters

In the event scheduling complexities or time do not permit the attendance of a full- or part-time court interpreter, or if no official or part-time court interpreter is available for a certain language, a free-lance approved court interpreter shall be summoned.

1.9.10.3 Notice of Need for Court Interpreter

1.9.10.3.0 From Clients

Clients shall advise the court of need for a court interpreter per standard 1.7.1.

1.9.10.3.1 Via Court Employees

At the earliest contact with a client, any court employee may determine whether a court interpreter will be required for each case and, if so, the language(s) involved, according to standard 1.2.4.

1.9.10.4 Responsibility for Coordinating Court Interpreting Services

The head of each region of court interpreters shall be responsible for assisting Trial Court Administrators in calendaring cases for which court interpreters are required. The Court Interpreter I shall have the primary responsibility of ensuring that court interpreters are assigned to each case.

1.9.10.5 Postponements Due to Unavailability of a Court Interpreter

Any time a full-time court interpreter is unavailable to serve in a matter, the Court Interpreter I may ask the judge or Trial Court Administrator to reschedule the matter so the cost of retaining a free-lance court interpreter can be avoided. If the judge turns down the request for postponement, then a free-lance court interpreter shall be provided.

1.9.10.6 Assignments of Official Court Interpreters

Official court interpreters should be made available to the courts according to the following ranking of priorities:

(A) Criminal, family and domestic matters in Superior and Municipal Courts;
(B) Grand jury;
(C) Civil matters in Superior Court, including civil commitment hearings;
(D) Quasi-criminal and traffic matters in Municipal Court;
(E) Court support services where bilingual or bilingual/multicultural personnel are unavailable;

(F) Proceedings before the Clients Security Fund;
(G) Proceedings before a District Ethics Committee, Fee Arbitration Committee, or the Disciplinary Review Board; and
(H) Weddings.

1.9.11 Lists of Approved Court Interpreters and Legal Translators

The Administrative Office of the Courts shall establish, maintain, publish and update regularly a list of approved court interpreters and a list of approved legal translators (see standards 1.3 and 1.4).

1.9.12 Compensation of Free-Lance Court Interpreters

1.9.12.0 Determination of Rates

The Supreme Court shall approve a uniform schedule of rates at which free-lance court interpreters shall be compensated in all courts. Exceptions to these rates may be permitted under exceptional circumstances and must be approved in advance by the Court Interpreting, Legal Translating and Bilingual Services Section of the Administrative Office of the Courts.

1.9.12.1 Rates

The rates shall be as follows:

	Approved	Unapproved
Hourly (2-Hour Minimum)	$ 25	$15
Half Day	$ 90	$45
Full Day	$175	$85

1.9.12.2 Reimbursement of Other Expenses

Free-lance court interpreters shall be reimbursed for tolls, parking and mileage at the prevailing rate approved for state employees. Other expenses may be reimbursed only under extraordinary circumstances as approved in advance by the Court Interpreting, Legal Translating and Bilingual Services Section of the Administrative Office of the Courts.

1.9.13 Compensation of Free-lance Legal Translators

1.9.13.0 Determination of Rates

The Supreme Court shall approve a uniform schedule of rates at which free-lance legal translators shall be compensated. Exceptions to these rates may be permitted under exceptional circumstances and must be approved in advance by the Court Interpreting, Legal Translating and Bilingual Services Section of the Administrative Office of the Courts.

1.9.13.1 Rates

The rates shall be as follows:

Legal forms, legal documents and other technical manuscripts	13¢/word
All other manuscripts	10¢/word

1.9.14 Monthly Statistics

The Administrative Office of the Courts shall establish a system of monthly statistics that monitor the work load of court interpreting which shall include at least the following data per type of proceeding:
(A) Language(s) involved; and
(B) Type of court interpreter who served.

1.9.15 Annual Report

The annual report of the Administrative Director of the Courts shall include a summary and analysis of pertinent utilization statistics, with commentary and recommendations to the Chief Justice for the improvement of all bilingual services.

1.9.16 Training

1.9.16.0 Training for Court Interpreters

An initial orientation shall be provided to all new approved court interpreters prior to their initial service and an ongoing program of professional development, including special seminars, shall be maintained.

1.9.16.1 Training for Bilingual Personnel in Public Contact Positions

The initial orientation for all bilingual persons appointed to public contact positions shall include training on the nature and importance of linguistic and cultural fluency for the administration of justice and their role in delivering effective services to limited English proficient persons.

1.9.16.2 Training for Bilingual/Multicultural Personnel in Direct Service Positions

The initial orientation for all bilingual/multicultural personnel in direct service positions shall include a minimum of eight hours of training on the nature and importance of linguistic and cultural fluency for the administration of justice and their role in delivering effective services to limited English proficient clients.

1.9.16.3 Training for Judges

All judges shall receive, as part of their initial orientation upon appointment to the bench, an introduction to these rules and how to work effectively with court interpreters when presiding over cases in which limited English proficient parties are involved. Specialized courses shall be offered at least every other year at the Judicial College for judges who seek in-depth training.

1.9.16.4 Training for Other Court Support Personnel

The initial orientation of all other court support staff shall include a minimum of six hours for professional staff and a minimum of two hours for all other staff on the nature and importance of linguistic and cultural fluency for the administration of justice, identification of resources and appropriate skills for serving limited English proficient clients, and familiarity with these rules.

1.9.17 Annual Meeting of Bilingual and Bilingual/Multicultural Personnel

The Administrative Office of the Courts shall coordinate at least once annually a meeting of bilingual and bilingual/multicultural judicial personnel in order to--

(A) Share information;
(B) Explore problems and concerns of staff;
(C) Provide training; and
(D) Coordinate efficient and effective delivery of services to limited English proficient clients.

1.9.18 Procedures for Enforcing These Rules

The Administrative Director of the Courts shall develop procedures for enforcing these rules which shall--

(A) Encourage persons to report allegations of non-compliance;
(B) Provide a fair and timely hearing of such allegations;
(C) Lead to appropriate remedies where allegations are substantiated.

See standards 1.0.3 and 1.7.11

PROPOSED ACT

CONCERNING THE SELECTION, QUALIFICATION, EMPLOYMENT AND SUPERVISION OF COURT INTERPRETERS, AND AMENDING, REPEALING AND SUPPLEMENTING VARIOUS PORTIONS OF THE STATUTORY LAW

STATE OF NEW JERSEY

AN ACT concerning the selection, qualification, employment and supervision of court interpreters, and amending, repealing and supplementing various portions of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. 1983 N. J. Laws, Chapter 564, is amended as follows:

1. The Legislature finds and declares that it shall be the policy of this State to secure the rights of [hearing impaired] persons who [, because of impairment of hearing or speech,] are unable to readily understand or communicate [spoken language] in the English language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

2. As used in this act:

a. ... No change;

[b. "Hearing impaired person" means a person whose hearing is impaired so as to prohibit the person from undestanding oral communications. The term further includes a person who, becaues of loss of hearing, cannot communicate spoken language.] A "person who is unable to readily understand or communicate in the English language" means a person who (1) is unable to speak English or to comprehend what others say in English, (2) Such that the person is unable to use English effectively as a functional tool of communication for sending and receiving information, (3) Thereby partially or completely--(a) Excluding the person from full participation, or (b) Inhibiting the person's understanding of the charge and the nature of the proceedings, or (c) Substantially prejudicing the person's rights, (4) Because the person (a) Is hearing impaired or (b) Has a mother tongue or native language other than English.

[c] d. ... No change.

[d] e. "Qualified interpreter" means (1) an interpreter certified by the National Registry of Interpreters for the Deaf, Inc. and listed by the State Division of the Deaf in the Department of Labor or the New Jersey Registry of Interpreters for the Deaf [.], or (2) an interpreter approved by the State Board of Court Interpreting and Legal Translating in the Division of Community Affairs of the Department of Law and Public Safety, or the Administrative Office of the Courts.

[e] f. ... No change.

3. ... No change.

4. The appointing authority shall appoint a qualified interpreter, and, if needed, an intermediary interpreter, to assist [a hearing impaired] all persons who are unable to readily understand and communicate in the English language throughout the procedings and in preparation with counsel as follows:

a. In any case before any court or grand jury in which a [hearing impaired] person who is unable to readily understand and communicate in the English language is a party, either as a complainant, defendant or witness, or as [hearing impaired] parents of a juvenile who are unable to readily understand and communicate in the English language;

b. At all stages in any proceeding of a judicial or quasi-judicial nature before any State agency or county or municipal governing body or agency in which a [hearing impaired] person who is unable to readily understand and communicate in the English language is a principal party in interest, either as a complainant, defendant, witness or supplicant, or as [hearing impaired parents] parents of a juvenile who are unable to readily understand or communicate in the English language;

c. In any proceedings in which a [hearing impaired] person who is unable to readily understand or communicate in the English language may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a coroner's inquest, grand jury proceedings and proceedings related to mental health commitments. A [hearing impaired] person who is unable to readily understand or communicate in the English language who has been arrested and who is otherwise eligible for release shall not be held in custody pending the arrival of an interpreter.

(1) When a [hearing impaired] person who is unable to readily understand or communicate in the English language is arrested for an alleged violation of a criminal law, a qualified interpreter shall be appointed prior to reading of Miranda warnings interrogating or taking a statement from the person who is unable to readily understand or communicate in the English language.

(2) Any statement, written or oral, made by a [hearing impaired] person who is unable to readily understand or communicate in the English language in reply to a question from a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding shall not be used against that [hearing impaired] person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily and intelligently or, the [hearing impaired] person has requested a waiver pursuant to section 10 of this act and the court makes a finding that any statement made by the [hearing impaired] person who is unable to readily understand or communicate in the English language was made knowingly, voluntarily and intelligently.

(3) ... No change.

(4) Until such time as sufficient numbers of interpreters have been qualified as provided under §2.e above to meet the interpreting work load that will be required under this act, anyone who would interpret for a court in the Judiciary must be approved by the Administrative Office of the Courts and anyone who would interpret for any other appointing authority must demonstrate possession of pertinent training, skills, knowledge and expertise and be approved by the appointing authority.

5. In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the [hearing impaired] person involved as a participant who is unable to readily understand or communicate in the English language.

6. Whenever an appointing authority is required to appoint an interpreter, the appointing authority shall [request a list of qualified interpreters from either the State Division of the Deaf in the Department of Labor or the New Jersey Registry of Interpreters for the Deaf.] appoint a qualified interpreter (a) approved by either the State Division of the Deaf in the Department of Labor or the New Jersey Registry of Interpreters for the Deaf when the person who is unable to readily understand or communicate in the English language is hearing impaired, or (b) who is on a list of qualified interpreters promulgated by either the State Board of Interpreting and Translating or the Administrative Office of the Courts when the person who is unable to readily understand or communicate in the English language has a mother tongue or native language other than English.

If the appointing authority's choice of a qualified interpreter does not meet the needs [or wishes] of the [hearing impaired] person who is unable to readily understand or communicate in the English language, the appointing authority shall appoint another qualified interpreter.

7.a. ... No change.

7.b. ... No change.

7.c. The State Board of Court Interpreting and Legal Translating shall maintain a list of qualified foreign language interpreters and provide the list to anyone upon request.

7.d. The Administrative Office of the Courts shall maintain a list of qualified court interpreters and provide the list to anyone upon request.

8.a. [Every appointed interpreter before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of the person in the English language to the best of his skill and judgment.] When serving in any court in the Judiciary, prior to beginning to interpret, every appointed interpreter shall swear or affirm to interpret accurately and impartially, using the modes of interpretation defined to be appropriate to the context and abiding by the Canons of Ethics and the applicable standards approved by the Supreme Court.

8.b. When serving before any other legal proceeding and prior to beginning to interpret, every appointed interpreter shall swear or affirm to make a true interpretation, to accurately communicate the statements of the person in the English language to the best of the interpreter's skill and judgement, honoring any canons of ethics which may govern the interpreter's professional conduct and practice, and abiding by applicable rules promulgated by the appointing authority before whom the service is being rendered.

9.a. [An] All appointed interpreters shall receive a [reasonable] fee which is commensurate with the professional skills and knowledge required for delivering [his] their services, together with [his] their actual expenses for travel and waiting time.

9.b. The Supreme Court shall establish rules governing the method for payment and the amount of the fee for interpreting services delivered in the Judiciary. [In the case of any civil or criminal proceeding before a court in this State the fee shall be paid by the court]. The court in which interpreting services are delivered shall pay all fees and actual expenses.

9.c. [and in] In the case of any proceeding before a State agency or a county or municipal governing body or agency the fee shall be paid by that agency or governing body.

10. The Supreme Court shall promulgate standards governing the practice of interpreting in all courts, including standards for appointment, qualifications, duties, and appropriate utilization of interpreters during proceedings under its jurisdiction.

11. Any appointing authority shall create and maintain full- and part-time interpreting positions as may be justified by demonstrated work loads in any languages for which there is sufficient justification.

[10] 12. The right of a [hearing impaired] person who is unable to readily understand and communicate in the English language to an interpreter shall not be waived unless the [hearing impaired] person requests a waiver in writing. The waiver shall be granted if the [hearing impaired] person's counsel and the appointing authority approve the request for a waiver.

[11] 13. Any information that the interpreter gathers from the [hearing impaired] person who is unable to readily understand and communicate in the English language pertaining to any proceeding then pending shall at all times

remain confidential and privileged on an equal basis with the attorney-client privilege.

2. Title 45, Professions and Occupations, Subtitle 1, Professions and Occupations Regulated by State Boards of Registration and Examination, is supplemented as follows:

1. There is hereby established a State Board of Court Interpreting and Legal Translating (herein referred to as the board) to be composed of three professional members, two members to represent the interests of the public, and one member who shall be an expert in constructing tests to determine linguistic proficiency. All members shall be appointed by the Governor by and with the consent of the Senate and according to the provisions of N.J.S.A. 45:1-2.2. The Administrative Director of the Courts or his designee shall serve as an ex officio member. The professional members of the board, with the exception of the professional members first to be appointed, shall be holders of certificates issued under the provisions of this act. The professional members first appointed shall be skilled in the art and practice of court interpreting and/or legal translating and shall have been actively and continuously engaged as a professional court interpreter and/or legal translator for at least five years preceding their appointments. The members shall hold office for a term of three years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which her or his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the members first taking office after the date of enactment of this act shall expire, as designated by the Governor at the time of nomination, one at the end of one year, one at the end of two years, and one at the end of three years. Each of the professional members of the board shall be primarily qualified in one or more of the following areas of expertise: court interpreting and legal translat- such that each area of expertise shall always be represented on the board by at least one of the professional members. In addition, one shall have been certified by the Administrative Office of the United States Courts and another by the American Translators Association. The board shall elect one of its members as chairman and one as secretary-treasurer, who shall hold their respective offices for one year. The secretary-treasurer shall give bond to the State in such sum as may be determined by the board. The board shall make all necessary rules and regulations to carry out the provisions of this act. Any three members shall constitute a quorum for the transaction of business. The board shall keep a complete record of all its proceedings and shall file an annual report with the office of the Secretary of the State.

2. The members shall be compensated and receive the support services of a secretary as provided by N.J.S.A. 45:1-2.5.

3. Any person who has received from the board a certificate of qualifications to practice as a court interpreter, legal translator or both, shall be known and styled as a "certified court interpreter," "certified legal translator," or "certified court interpreter/legal translator." No other person, and no partnership, all of the members of which have not received such certificate, and no corporation, shall assume such title or any other words, letters or abbreviations tending to indicate that the person, partnership or corporation so using the name is a certified court interpreter and/or legal translator.

4. The board shall grant certificates in court interpreting and legal translating and other specializations as from time to time may be required.

A certificate may be granted only when a person has successfully passed an examination under such rules and regulations as the board may prescribe or when the board accepts another certificate as equivalent to its own standards. Each certification examination shall be based upon and measure validly and reliably all related tasks to be performed under the certification at the minimum satisfactory level of proficiency at which those tasks must be performed, according to the documented language levels, language registers and dialects which may be involved.

5. The examinations shall be held at least once each year for each type of certificate at such times and places as may be necessary in the opinion of the board. The time and place of holding such examinations shall be advertised as the board may determine at least 30 days prior to the date of each examination.

6. The board may prescribe charges for examinations, licensures and other services it performs as permitted by N.J.S.A. 45:1-3.2.

7. The board shall be subject to the provisions of N.J.S.A. 45:1-14 et seq. with respect to investigative and enforcement powers and procedures and uniform standards for license revocation, suspension and other disciplinary proceedings.

8. Each member of the board shall receive $175.00 for each day on which he or she is actually engaged in giving examinations, and $50.00 for each day actually employed in the discharge of official duties, and in addition thereto all necessary expenses incurred in executing the functions required under this act, upon certifying same to the State Treasurer, provided, however, that total salaries of the board per year shall not exceed the amount apporpriated by law for such year after payment or provision for payment of all costs or expenses other than such salaries. The compensation and expenses of the members of the board and the expenses of the board that are necessary to carry out the provisions of this act shall be paid by the State Treasurer from the fees collected under N.J.S.A. 45:2-3.2, provided, that such compensation and expenses shall not exceed the amount so collected as fees. No additional employees shall be engaged in addition to the board itself, except for consultants who may be required for technical assistance in developing or administering examinations.

9. No person shall engage in the practice of court interpreting or legal translating in this State, as defined in this act, unless having first obtained a certificate from the board as provided in this act; provided, however, that all practicing court interpreters and legal translators may continue to practice up to the date the results of the first certification are published.

10. The word "interpreting" as used in this act shall be defined to mean mediating effective communication between two or more persons who speak different languages by converting orally the speech of the respective parties to and from each other's language any testimony given under oath before any court, referee, board, commission or other body created by a statute of this state. The word "translating" as used in this act shall be defined to mean converting a written text from one language into a written text or oral speech in another language when the document is to be submitted as evidence to or is to be an official translation of a form or other document employed in conducting the business of a court, referee, board, commission or other body created by statute of this state.

3. N.J.S.A. 2A:11-28 through 30 are repealed.

4. This act shall take effect immediately.